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VA, HUD, AND INDEPENDENT AGENCIES APPROPRIATIONS FOR 2001

DEPARTMENTS OF VETERANS AFFAIRS AND

HOUSING AND URBAN DEVELOPMENT, AND

INDEPENDENT AGENCIES APPROPRIATIONS

FOR 2001

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON VA, HUD, AND INDEPENDENT AGENCIES

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PART 7

ENVIRONMENTAL PROTECTION AGENCY

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Thursday, March 16, 2000.

U.S. ENVIRONMENTAL PROTECTION AGENCY

WITNESSES

CAROL M. BROWNER, ADMINISTRATOR
W. MICHAEL McCABE, ACTING DEPUTY ADMINISTRATOR
MICHAEL W.S. RYAN, ACTING CHIEF FINANCIAL OFFICER
ROBERT PERCIASEPE, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION
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Chairman Walsh's Opening Remarks

Mr. Walsh. Good morning. This is the first of two days the subcommittee has scheduled to take testimony on the fiscal year 2001 budget request for the Environmental Protection Agency. EPA's budget request of \$7,276,599,000 represents a \$286 million decrease from fiscal year 2000 funding level of \$7,562,000,000.

As in last year's budget request, the Agency accomplished this net reduction in budget authority by greatly decreasing the Clean Water SRF and congressionally sponsored wastewater and drinking water infrastructure improvement programs, and then increasing various operations and other programs we could call administration earmarks.

Today we will hear from the Agency's Administrator, the Honorable Carol M. Browner. On March 29th, the subcommittee will conduct its second day of hearings on EPA's fiscal year 2001 budget. However, on that day, the Agency will be represented by various Assistant Administrators. It is my intention on the 29th to focus primarily on air and water matters during the morning session and on Superfund, pesticides and toxic substances, research, enforcement, and other

remaining issues during the afternoon.

Because this is the first time in several years that the subcommittee has scheduled its hearings in this manner, I should note once again that today is the only day we have currently scheduled Administrator Browner to appear.

Today's appearance by Ms. Browner represents the eighth consecutive year she has come before this subcommittee to testify on behalf of the Environmental Protection Agency. This is not only the longest consecutive streak by a wide margin of any EPA Administrator, I dare say Ms. Browner is one of a very few number of Cabinet-rank officials to have served through two full terms of this administration. You are certainly to be congratulated on your devotion to public service and, I suppose, for your perseverance as well.

Throughout these years, including my year and a half as subcommittee Chair, there is no doubt that we have had disagreements with many of EPA's policy decisions. In just a moment, I will have a number of questions that fit into this category. But there is also no doubt that we all wish for and, in the context of what we do on this subcommittee, are working for a cleaner environment. We may disagree on how we achieve this important goal, yet I do not want to let this discussion of what may be your last appearance before the subcommittee go by without acknowledging your hard work, your professionalism, and your dedication to this important cause. And I wanted you to know of the respect that we have for you on this subcommittee.

I would now like to call on my colleague and friend, Mr. Mollohan, for comments that he may make. Following that, I would ask the Administrator to present her testimony, and we will include the entire statement in the record. Thank you.

Ranking Member Mollohan's Opening Remarks

Mr. Mollohan. Thank you, Mr. Chairman.

I would like to welcome the witness to the hearing this morning, to compliment her on her administration of the Agency, and I look forward to her testimony.

Mr. Walsh. Please proceed Administrator Browner.

Administrator Browner's Opening Remarks

Mr. Chairman and members of the committee, I am pleased to appear before you again to present the Clinton-Gore administration's budget request for the Environmental Protection Agency. Accompanying me today are many of the Agency's senior managers, including Mike McCabe, who has joined us recently as the Acting Deputy Administrator, and our Acting Chief Financial Officer, Mike Ryan.

Let me begin by saying, Mr. Chairman and Mr. Mollohan, that we look forward to working with both of you and all of the members of this subcommittee as we fashion an appropriate budget for the work we do on behalf of the American people to protect their air, their water, and the communities where they raise their children.

Mr. Chairman, I would agree that we have had a productive working relationship. We haven't always agreed, but I think we

have been able to understand each other, and that has allowed us to move forward toward our mutual goal of protecting public health and the environment. I thank you and your colleagues for that.

Together, we once again have a great opportunity to work in partnership to provide the American people with strong public health and environmental protections that they not only want, but actually deserve. The budget that we present today achieves that goal. The President has presented a budget that maintains fiscal discipline while making essential investments in public health and environmental priorities.

This administration has repeatedly demonstrated that we can enjoy enormous prosperity, including the longest economic expansion in history, while aggressively cleaning up our Nation's air, water, and land.

Over the past 7 years of unprecedented economic progress, this administration, working with this committee and others in Congress, has distinguished itself through unprecedented environmental progress. And we have done it through common-sense, cost-effective measures that emphasize partnerships and cooperation with businesses, State and local governments, and the citizens at large.

The 1996 amendments to the Safe Drinking Water Act are an example of what we can do together in a bipartisan manner. We have supplied the first ever funding, a \$2.3 billion loan program, for communities to upgrade their drinking water systems. We have set up the first public right-to-know program for ensuring that all consumers of tap water know the source and the quality of the water they and their families drink. We have announced new measures to protect the health of 140 million Americans by strengthening drinking water standards, including those for contaminants like issues like cryptosporidium.

As a result of our joint work to protect our Nation's drinking water, 89 percent of Americans now get tap water from drinking water systems that meet health standards. That is an increase of 6 percent since we began this effort in 1994.

We have tripled the reaching of cleaning up toxic waste sites reaching construction completion in the Superfund program. More toxic waste sites have reached construction completion, and more affordably, in this administration than in all previous years combined. At the end of 1999, a total of 670 Superfund sites had been cleaned up. More than 500 of those have been completed since the beginning of this administration.

We have taken important steps to reduce emissions from cars and small trucks by up to 95 percent, and for the first time ever, we have ensured that SUVs, minivans, and light-duty trucks will meet the same stringent standards as other passenger vehicles.

We have required reductions in sulphur levels in gasoline. We have cut toxic air pollution from municipal combustors and other important source categories by 90 percent or more. And we have unveiled new efforts to improve air quality in our Nation's 156 national parks and wilderness areas. As a result of these efforts, some 43 million more Americans today are breathing cleaner air.

At the same time, we have dramatically increased the

public's right to know about toxic chemicals released into their local communities. The Clinton-Gore Administration has nearly doubled the number of chemicals that must be reported to communities and required over 6,000 new facilities to report their releases of toxic emissions. As a result, in the past decade toxic pollution has fallen by nearly 50 percent, partly as a result of simply giving citizens information so that they can work with local businesses to find common-sense, cost-effective ways to further reduce their pollution.

We have revitalized communities by accelerating the cleanup of brownfields. The abandoned or contaminated property that sat idle is now being put back into productive use. Communities across America are gaining new hope with nearly \$70 million in assessment grants awarded to over 300 brownfield projects. These projects have now leveraged \$1.8 billion in new investments, created over 5,000 jobs, expanded the tax base for local communities, and brought decaying areas of cities back to vibrant economic life.

Working with Congress, we have passed a new Food Quality Protection Act that for the first time sets pesticide safety standards that are protective of our children. We have already taken action to reduce significantly special risks posed to children by limiting the use of two of the pesticides most widely used on foods found in the diets of our children. And while ensuring strong environmental protection, we have reinvented Government in innovative ways to achieve greater environmental results at less cost. We have vigorously applied the common-sense, cost-effective solutions that we know exist to today's environmental challenges.

Reforms by the Clinton-Gore Administration have eliminated more than 26 million hours of paperwork for businesses and communities. That is the equivalent of returning more than half a million work weeks back to the private sector at a cost savings to industry of \$800 million over the past 4 years.

The President's budget request that is now before you, \$7.3 billion for the Environmental Protection Agency, and \$2.2 billion for the Better America bonds program, builds on and continues 7 years of environmental achievements under the Clinton-Gore Administration. The budget provides an 11 percent increase in EPA's core programs. This is where we do the vast majority of the work in terms of setting public health standards for air pollution and water pollution. This is where we do our science. This is where we do our enforcement. This is the largest increase in EPA's operating budget in the history of this administration.

The Administration request provides for the President's Clean Water Action Plan, designed to finish the job of cleaning up America's waters and restoring to full use our magnificent lakes, our rivers, and our bays. It provides for a new initiative to protect and improve one of our Nation's greatest shared treasures, the Great Lakes. It provides for the President's Cleaner Waters Across America program which, for the first time, targets individual waterways for cleanup plans tailored specifically to that waterway's needs.

It provides new funding to protect our waterways from polluted runoff, the largest remaining threat to America's water quality. This part of EPA's budget gives States the flexibility they

need to fight polluted runoff by allowing up to 19 percent of their Clean Water State Revolving Fund to be used for this critical challenge.

The President's budget provides the necessary funding for one of the administration's top environmental priorities: protecting the health of our children, including targeting such special threats to children as lead contamination, air pollution that can make an asthma attack worse, and dangerous levels of pesticide residues in foods that are found in our children's diet.

The President's budget also provides for a Creative Clean Air Partnership Fund. The budget calls for continuing to expand the public's right to know, including a new effort to develop a network for key environmental data with our State partners. This new network will be aimed at ensuring data quality, achieving reductions in reporting burdens from the business community, and enhancing public access.

The budget calls for continuing our success at cleaning up the Nation's worst toxic waste sites, and it calls for investing in our highly successful Brownfields program.

Again, the budget calls for making our communities more livable through Better America bonds. The administration is proposing this innovative financial tool to give communities the resources they need to make their own decisions about preserving green spaces, addressing water pollution concerns, and promoting economic development.

In conclusion, Mr. Chairman, this budget builds on 7 years of proven success by the Clinton-Gore Administration. It builds on 7 years of developing the kind of programs that the American people want. It is a budget that will build strong American communities through partnerships and cooperation through tough environmental and public health standards, and through innovative, flexible strategies to meet those standards. It is a budget that will ensure a strong economy and a healthy environment for this country, and, Mr. Chairman, I thank you for the opportunity to be here with you all today to answer your questions and to work together in the coming months.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

RADON IN DRINKING WATER

Mr. Walsh. Thank you very much for your testimony. We will begin the questions.

I would like to talk about two areas, radon in drinking water being the first. Last fall, EPA acted on a requirement set forth in the Safe Drinking Water Act amendments and issued its proposed rulemaking on radon in drinking water. The initial comment period was to end on January 4, 2000, but acting on a request from Members of Congress, it was extended.

While I don't quarrel with EPA's action to review this issue pursuant to the law and to set standards consistent with legitimate health requirements, I must say that what I have learned relative to the proposal absolutely defies credibility.

In a nutshell, it is my understanding that you are proposing a radon in drinking water standard of 300 picocuries per liter when a standard of 4,000 picocuries per liter is supported by the National Academy of Sciences. You are proposing this standard despite the fact that your own data indicates that less than 2 percent of indoor radon comes from water. Moreover, the 1999 NAS report determined that of the 19,000 cancer deaths attributed to inhaling radon gas in the home, only 160 are estimated to result from inhaling radon that was emitted from water.

The report further indicates that another 720 deaths are caused by breathing radon in outside air and the remaining 18,000-plus from breathing radon in indoor air. It is my understanding that an overwhelming majority of the individuals from which these statistics were derived were also known to be moderate to heavy smokers. Making this matter even more ridiculous is the fact that the best available technology to remove radon from water is air stripping, which then requires the discharge of highly concentrated radon into the atmosphere.

Air discharge modeling in many communities has predicted such discharges will unnecessarily subject the local citizenry to elevated health risks. Such cross-media contamination reminds me of the situation we now find ourselves in relative to the use of MTBE.

What is the current status of this rulemaking? When is it due to be finalized? And why is your Agency unnecessarily creating another MTBE-type situation?

Ms. Browner. Well, with all due respect, Mr. Chairman--and I am more than happy to talk about MTBE, as I think that is an important issue that we should discuss today--I don't think this situation is in any way similar to the MTBE situation.

We have recently concluded an extended public comment period on our radon proposal. I think it actually closed on February 4th of this year. We have received approximately 600 comments. We are in the process of evaluating those comments.

Under the new Safe Drinking Water Act passed during this Administration, we are required to finalize our decisions with respect to radon in drinking water by November 2000. So we will be completing the work in the next several months.

RADON: MULTI-MEDIA CHALLENGE

If I might just take a moment to agree with you that the challenge of radon is a multi-media challenge and we did recognize that in our proposed rule--we did give. In the proposal, we suggested that the States could be given the flexibility to look at how to reduce radon from both drinking water and indoor air. This is a unique multi-media framework bringing together two statutory responsibilities in a way that we are trying to do more. The statutes don't always lend themselves to that, but I think that in this instance we have done a good job of providing, or suggesting, some flexibility to the States.

We have also suggested that our State indoor radon grants could be used by the States for development of a multi-media strategy in the States. We have given them the flexibility to take money which historically would have been simply for radon

air issues, and use it for a multi-media approach.

Let me just say finally that the proposed rule did provide for a least-cost alternative. We believe that for most drinking water utilities, this would not require the installation of equipment to treat for radon in drinking water, and would involve only modest enhancements of existing State indoor radon programs. If it would be helpful to you, we would be happy to elaborate on that in writing.

My memory has served me poorly. It is not November of this year that we are required by the statute to be done but, rather, August. That is why I have these people behind me to give me the right answers.

RADON: NATIONAL ACADEMY OF SCIENCE STUDY

Mr. Walsh. Why, when the National Academy of Sciences suggests a level of 4,000 picocuries per liter, would you propose at a level of 300? What science do you use to show that your science is better or more indicative of the danger here than the National Academy of Sciences?

Ms. Browner. As I understand it, the National Academy report is a relatively new report. We are working with the Office of Management and Budget to look at it, and I think that we should come back to you when we have fully evaluated the Academy's advice to us and answer that question.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Walsh. Won't this policy require that communities air strip the radon from the water, thus emitting it into air, and causing additional problems for remediation of radon in the air?

Ms. Browner. Mr. Fox from our Office of Water, who has responsibility for the Drinking Water Program indicates that that is only one of several solutions that would be available to States, and it may not be the one that in some instances makes the most sense.

One of the challenges of radon is that it doesn't occur in every part of the country, and different parts of the country have higher levels. So it may be--and I think this is what we have tried to do in our proposal--that different States will make different decisions about how best to provide the public health protections.

Mr. Walsh. When you proposed this rule, did you consult with the National Academy of Sciences and they did not have this data at that time?

Ms. Browner. They have developed it, I think, in response to a congressional directive.

Mr. Walsh. This is a 1999 report from the National Academy of Sciences.

Ms. Browner. Correct. We are in the process of reviewing the report, and obviously, we will have to incorporate it into any final decision that we make.

Mr. Walsh. A picture is worth a thousand words. Here is the radon risk: 18,000-plus deaths from airborne, 160 lung cancers

from breathing radon indoors from drinking water.

Ms. Browner. We don't disagree that air is the biggest source of radon exposure. When Congress rewrote the Safe Drinking Water Act, we are told that we had to set a drinking water standard for radon. We are not disagreeing with the Academy on that, and we have said this many, many times.

But, Mr. Chairman, I think what we have tried to do--and we are the first to say it is not easy--is, although we are working in the drinking water requirements of the statute, to try and bring in the fact that air exposure for most people probably presents the greatest risk, I think the other problem----

Mr. Walsh. Air exposure clearly presents the greatest risk.

Ms. Browner. Right, and we don't disagree with that. But we are under a statutory obligation with a deadline of August of this year to set a drinking water standard.

Mr. Walsh. But not at 300 picocuries per liter.

Ms. Browner. As I understand the Academy report, they did not speak to the issue of what the MCL should be, in other words, what the drinking water standard should be. They did not tell us what they thought the drinking water standard should be.

What we are trying very, very hard to do is both meet the needs of the drinking water law, but also provide the flexibility to States. We will certainly continue to work to do this so that most of the solution will actually not come in terms of installing treatment technologies in the drinking water system but, rather, will come through a multi-media approach focusing on air.

Mr. Walsh. I have a number of other questions relating to the total maximum daily load regulations. I suspect others will have questions about that as well. I will hold these questions for the second round. Thank you very much.

Ms. Browner. Thank you.

Mr. Walsh. Mr. Mollohan?

CLIMATE CHANGE PROGRAMS

Mr. Mollohan. Thank you, Mr. Chairman.

Ms. Browner, I would like to ask you a series of questions which will give you an opportunity to talk about your climate change programs, of which there is considerable interest in the Congress and certainly on this committee. Let's just start with an effect-on-the-economy question. What effect on our economy do the EPA's climate change programs have?

Ms. Browner. The vast majority of EPA's climate change programs are partnerships with the business community, looking for energy efficiencies, for example, through our Energy Star program, through our Energy Star Buildings program. What we have found is that for a very modest investment of Federal dollars, we can reap a significant repayment both in the business community and for the public at large in terms of greater energy efficiency. So I would say it is a net positive effect on the economy.

The EPA programs have saved American families and businesses more than \$11 billion in their energy bills through energy-efficient products, everything from refrigerators to other systems in the house. When your computer goes to sleep,

for those of you who have a screen that goes to sleep, that saves a huge amount of energy when you walk away from your computer but don't feel like turning it off because you will be back in a few minutes. That is actually something that EPA developed with the computer industry. And, in fact, many of your computers probably carry a little logo on it, Energy Star, noting the fact that this was a private-public sector effort at energy efficiency.

CLIMATE CHANGE ACTIVITIES: IMPACT ON ECONOMY

Mr. Mollohan. If you were to talk about what effect climate change would have on the economy, would that exhaust it?

Ms. Browner. Oh, no. I think there are other effects. I think that in terms of the programs from EPA that have largely been focused on energy efficiency, the savings have been in energy bills.

I think the other side of the equation is what happens if we don't make these kinds of energy efficiency investments and if we continue simply on the path of increasing greenhouse gas emissions. The cost of dealing with the problem 10, 15, 20 years down the road will simply grow and grow.

Mr. Mollohan. Is there a cost side to that equation? You have talked about the benefit side. Is there a cost side to the economy?

[Pause.]

Mr. Mollohan. Why don't you submit that for the record?

Ms. Browner. Yes, why don't we submit that for the record?

Mr. Mollohan. Okay. Can you provide for the record how EPA's climate change programs have reduced U.S. greenhouse gas emissions to date, and if the President's budget for fiscal year 2001 were adopted?

[The information follows:]

CCTI Cost to the Economy

There is a cost to be paid if we do not invest in these programs and support energy efficiency investments. In fact, we would be wasting a tremendous opportunity. In the U.S., we expect that over 50% of greenhouse gas pollution in 2010 will be caused by equipment that is purchased over the next decade. If we don't fund these initiatives, we will continue to miss opportunity after opportunity to make better investments that help the economy without hurting the environment.

If Congress funds EPA's climate change technology partnerships at last year's funding levels (\$103 million) instead of increasing our investment to the full extent proposed by the President (\$227 million), the result will be:

More greenhouse gas pollution: 335 million metric tons of unnecessary greenhouse gas pollution will be emitted to the atmosphere over the next decade. (Metric tons of carbon equivalent emissions.)

Higher energy bills for schools, families, and small businesses: American families, small businesses, local schools, and industry will spend \$35 billion more on energy bills over the next decade.

More local air pollution: Local smog and air quality will

be made worse by the unnecessary emissions of 850,000 tons of nitrogen oxides over the next decade.

CCTI: U.S. Greenhouse Gas Emission Reductions

On a cumulative basis from 1995 through 1999, EPA's climate change programs have reduced 115 million metric tons of carbon equivalent (MMTCE). We estimate that the programs have reduced the growth in greenhouse gas emissions since 1990 by about 19% from where they would have otherwise been.

Since many of the investments promoted through EPA's climate programs involve energy-efficient equipment with lifetimes of ten years or more, the investments that have been spurred through 1999 will continue to deliver environmental benefits through 2010 and beyond. EPA currently estimates that based on investments in equipment already made due to EPA's programs through 1999, greenhouse gas emissions will be reduced by more than 230 MMTCE cumulatively through 2015. EPA is requesting a \$124 million increase in 2001 funding for its climate programs in order to target these additional opportunities throughout all sectors of the economy. EPA will build upon its government/industry partnership efforts to achieve even greater greenhouse gas reductions and technological advances. EPA will take advantage of additional opportunities to break down market barriers and foster energy efficiency programs, products and technologies, and cost-effective renewable energy, simultaneously reducing pollution and energy bills. In 2001, EPA expects to: Eliminate 66 MMTCE of greenhouse gas emissions over the course of the year; reduce U.S. energy consumption from projected levels by more than 70 billion kilowatt hours annually; reduce other air pollutants such as NOX, particulate matter and mercury through energy efficiency, and reduce water pollution through better fertilizer management (NOX emissions will be reduced by about 170,000 tons in 2001); and provide about \$9 billion in energy bill savings to consumers and businesses that use energy-efficient products for the year.

Ms. Browner. Yes, I can actually answer that, and then provide the rest for the record.

Mr. Mollohan. Sure.

CLIMATE CHANGE TECHNOLOGY INITIATIVE (CCTI) ACTIVITIES

Ms. Browner. We are asking for a \$124 million increase in EPA's climate change programs. That funding will allow us to reduce an additional 335 million tons of greenhouse gas emissions over a 10-year period.

What we are able to do is look at the programs that we invest in in terms of these partnerships with the business community, and then show you how many tons of greenhouse gas emissions reductions we can get. And we can provide that analysis for you.

Mr. Mollohan. Is this a totally voluntary program?

Ms. Browner. Yes, it is. There is no regulatory component to our climate change program, and Mr. Knollenberg has obviously directed us in a rider over the years, with which we

are in full compliance.

Mr. Knollenberg. Could I interrupt for a moment?

[Laughter.]

Mr. Mollohan. Oh, I suppose.

Are there any rulemaking components to the climate change program? And I guess you answered that--if it is voluntary, the answer's no----

Ms. Browner. They are voluntary. There is no rulemaking.

Mr. Mollohan. You could have a rulemaking making it voluntary, too.

Ms. Browner. No, you can't. [Laughter.]

Mr. Mollohan. Not in your Agency.

What year and in what administration did the climate change program begin?

Ms. Browner. It began under the Bush administration, in 1991. I think there was a recognition in keeping with Rio and the other nations of the world and the recognition of how great the challenge was. EPA under there was a Bush administration began this very, very successful program.

KYOTO PROTOCOL

Mr. Mollohan. I know Mr. Knollenberg is going to follow up and explore this specific question, but let me ask and give you a chance to get on record with regard to it.

Has EPA proposed or issued rules, regulations, decrees, or orders for the purpose of implementation or in preparation for the implementation of the Kyoto Protocol?

Ms. Browner. No.

Mr. Mollohan. And you might want to answer it and then elaborate if you want.

Ms. Browner. No. The Administration, the Environmental Protection Agency, is not involved in the business of implementing Kyoto. We do work with the business community and with others on a voluntary basis to develop cost-effective programs to reduce greenhouse gases. But in no way have we issued rules, regulations with respect to implementing Kyoto.

Mr. Mollohan. I guess the question is not ``have you entered into a rulemaking,'' but have you done anything that in any way is intended or could in any way be interpreted as preparatory activity or expenditure of funds in preparation for implementation of any of the Kyoto Protocol?

Ms. Browner. No, we have not, absolutely not.

Mr. Mollohan. And is that conscious on your part in response to the restrictions that have been contained in Federal legislation for the last several years?

Ms. Browner. Well, actually, it goes beyond that. The Kyoto Protocol has not been agreed to or ratified by the United States Senate. It has been signed by the President, but it has not been ratified by the United States Senate. It is not a treaty in effect, if you will, within the United States. So it would not be appropriate for us for that reason. But we also obviously respect the word of this Committee and of the Congress.

TOTAL MAXIMUM DAILY LOADS (TMDLS)

Mr. Mollohan. The Agency has set a goal of significant reductions over the next 5 years in non-point-source water pollution in order to deal with agricultural and other runoff. In addition to existing programs, we have heard a lot about the so-called total maximum daily load, or TMDL, approach. Is this merely a way to judge progress on meeting regional goals, or is the TMDL approach intended to create a new regulatory standard with enforcement actions?

Ms. Browner. The TMDL program, which dates back to the original Clean Water Act, and I think very appropriately so, was envisioned as a tool for determining on a water body basis how much pollution needs to be taken out, or the other way to think about it is how much pollution can be in a river, or lake and still be fishable and swimmable and the goals of the Clean Water Act.

As the country over the last 30 years has worked to clean up our rivers and lakes and to put in place all of the technologies, the controls on pipes to clean up our rivers and waters, we have made huge progress. Now we are at a point where it really does make sense to go out river by river, lake by lake, and figure out how much pollution has to be taken out, and how much more pollution do you need to remove.

So we have proposed a framework for the States. We see TMDLs as being a program that would have to be managed on a day-to-day basis by the States. They would be responsible for looking at each river, each lake, to determine how much excess pollution there is, and then determine the plans for reducing that pollution. Those plans could be everything from best management practices already in place, for which results will be unfolding in the coming years, to other programs, such as the non-point-source money that we provide the States, and the Section 106 money that we provide the States.

But if you think about it, it really is the sensible next step, our final step, to providing cleaner water. These are not national standards but, instead, water body-specific efforts managed by the individual State.

TMDL litigation

I do want to say one thing about this, and as I think is well known by many of you, EPA has been sued by a number of environmental groups, probably in many of your States. Under the Clean Water Act, if the State fails to set one of these loads, the cause of action rests not against the State but against the Environmental Protection Agency. That is how Congress wrote the statute 30 years ago, and we can all debate whether that was right or wrong, but that is the reality of the law.

It is a very frustrating position for us right now. We get sued, and then we have to enter into some kind of an agreement to meet the requirements of the law because the judge says you are going to meet the requirements of the law. We try and bring the States in and say, let's all agree to what we are going to do here to set the loads and develop the plans.

In some instances, on some water bodies, the States come in; in other instances, even within the same State, they don't come in. They are just frustrated. They don't want to do it.

TMDL state frameworks

So what we are trying to do is get beyond this litigation, because it is driving everyone crazy, to put out a framework so the States will have a framework that they will do their work in. Then when we get sued for a State failing to do the job, we will be able to say to the judges that there is a framework, and that the States are working within that framework.

I will give you an example of why the framework should be attractive to the States. Under some of the litigation, we have had judges force deadlines of 7 years--for example, Lake Okeechobee in Florida may have a 7-year deadline. What we have proposed in the TMDL program is actually 15 years because we recognize the magnitude of the undertaking. But until we get this in place, we are left on a case-by-case basis with different judges and different States to try and weed our way through this. So our intention is to try and create a reasonable program managed by the States, not by the Environmental Protection Agency.

Having said all of this, I do want to note that we are the first to agree that the proposal we originally put out was confusing. There is no way around it. I actually sat down and read sections of it when I started getting phone calls. It is confusing. We have an obligation to fix that confusion. Probably the greatest confusion has come in the agricultural community. We want to be very clear: The Clean Water Act does not allow EPA to require permits for non-point-source pollution, period.

Mr. Mollohan. Say that again.

Ms. Browner. The Clean Water Act does not allow the Environmental Protection Agency to require a permit for non-point-source pollution. We absolutely agree with that.

Moreover, the Clean Water Act generally does not allow the Environmental Protection Agency to require permits for agricultural activities. The Clean Water Act does require that States set total maximum daily loads, and that they then provide detailed programs of how they are going to achieve those reductions with reasonable assurances.

We want to be very clear that we believe programs such as best management practices, without permits, can be an important tool. A reasonable assurance in our book could be as simple as some of the money we are giving the States--and we are asking for a significant increase in these funds before this committee. But some of the money we are giving the States is going to implement those BMPs. That is a reasonable assurance in our book.

Again, we need to be clearer about this. We are going back now and looking at how we can be clearer. But that is what we are trying to do here.

Mr. Mollohan. Thank you, Mr. Chairman.

Ms. Browner. I apologize. It is a difficult issue.

Mr. Mollohan. It is the witness' fault. [Laughter.]

Ms. Browner. It is absolutely the witness' fault. You know, it is my eighth year. I might not be back.

Mr. Mollohan. No, actually, you have touched on every one of my questions here. But what is curious to me is that you are

talking about reasonably looking at these waterways on a case-by-case basis. But without a standard, how do you avoid arbitrariness and how do you enforce the reduction?

Ms. Browner. Well, it would be up to the States, when they set a reduction target for a particular lake, to then design a program. Let's say they needed 100 pounds of phosphorous reduction, they could decide that 50 of those pounds are going to come from best management practice and 50 are going to come through a permitting program.

Mr. Molloyhan. Taking that example, just to educate me, they would need that reduction to achieve what standard?

Ms. Browner. Fishable and swimmable, which is the standard of the Clean Water Act.

Mr. Molloyhan. And is that a standard that is different depending on the waterway that is involved?

Ms. Browner. Yes, absolutely different. Yes, very different. And it will be different for different pollutants. For example, you have some rivers that are more phosphorous-tolerant. They have vegetation that can absorb phosphorous. You have the Florida Everglades, which is all but phosphorous-intolerant. That will vary dramatically across the country.

The standards are set by the States. They decide how much pollution has to come out. They decide what their water quality standards are. So, for example, Florida is in the process of setting a phosphorous standard right now.

TMDL COSTS

Mr. Molloyhan. Final question. What kind of estimated costs are involved here? You indicated we have increased requests in this budget, and looking across the country and projecting the out-years, what kind of trend line are we looking at?

Ms. Browner. As a part of the proposal, we did do a cost analysis. What we looked at is the cost to the State governments.

Mr. Molloyhan. You did or didn't do a cost analysis?

Ms. Browner. We did. We looked at what it would cost the State agencies, for example, to make the determinations and to run a program. And I will will provide that cost analysis for the record.

[Clerk's Note.--The material provided by the Agency could not be included in the record due to the length of the document. The information was provided to the Subcommittee.]

I think there was another part to the question.

Mr. Molloyhan. I have heard numbers of tens of billions of dollars. Is that something that---

Ms. Browner. For the State agencies? No. That is not the kind of numbers we are talking about.

Mr. Molloyhan. Okay.

Ms. Browner. I think there are two issues here. One is what does it cost the State---

Mr. Molloyhan. Cost to the economy.

NON-POINT SOURCE FUNDING INCREASE

Ms. Browner. And what is the cost to people who have to reduce their pollution?

If I might just take this moment to explain the increases we are seeking, in the TMDL program, which is referred to as the Section 106 program, we are asking for a \$45 million increase on a base of \$115 million. It is a significant increase in funds for the States.

Secondly, in the non-point-source grant program, distinct from the revolving fund money, we are asking for a 25 percent increase. It is a \$50 million increase on a base of \$200 million.

Mr. Mollohan. Thank you, Mr. Chairman. Thank you, Ms. Browner.

Mr. Walsh. Mr. Knollenberg.

KYOTO: CLIMATE CHANGE CONFERENCES

Mr. Knollenberg. Thank you, Mr. Chairman.

Welcome again, Ms. Browner. I appreciate your coming before us. I know that we sometimes have differences of opinion, but we have learned to live through those. But let me bring up this morning--I was particularly interested in the gentleman from West Virginia and his comments and questions about the implementation aspects of the Kyoto Protocol. And I know that you know I have been fiercely and very staunchly opposed to any implementation, and rightfully so, because the language of my amendment--which, by the way, is not a rider; it is a funding limitation. It is the text of the bill. And I think for the record I should have that made very clear.

I know about the divisions on this whole issue of the greenhouse gases and the effect of carbon dioxide, and you do, too, so let's not get into that. You know where I am on it, and I know pretty much where you are on it.

But I would just note that gasoline prices, which are already high, obviously, if there were implementation occurring, would kick them much, much higher than they are right now, in my judgment.

What I am concerned about is--and I heard the answers you responded to Mr. Mollohan with--that the Clinton-Gore administration is not implementing and not moving towards implementation of the protocol through any back-door measures. But let me just point out to you that, unfortunately--and I want your view of this--there is a list of evidence that concerns me greatly. Let me turn to that. And I would like to enter, incidentally, these items into the record. We have, for example, what we feel is demonstrable proof of activity that EPA is involved, is crossing the line. I will give you, for example, one.

There was a Germany invitation, an IG investigation that took place back in--I think about a month back or so. Let me just read to you what is on this invitation because this talks about an event that will focus on those issues concerning protecting the environment as well as common ways to implement the so-called Kyoto mechanisms. Now, that is Exhibit 1.

Ms. Browner. I believe this is an international meeting that we were invited to.

Mr. Knollenberg. Yes. Let me go on just briefly, through. Number two, Pennsylvania. I have got ten of these. I am not going to read them all to you or highlight them all, but there

are ten of them, and I aim to get those into the hands of the committee members, too.

Ms. Browner. Do I get to respond to each of them? Is that--

Mr. Knollenberg. Let me read them to you and then maybe you can advise yourself as to how you want to go about this. But the second one, again, was in Pennsylvania, and this one involves joint implementation, proposed trading processes, a clean development mechanism, cap and trade schemes under discussion. Now, those have nothing to do with anything but Kyoto, absolutely Kyoto. Those didn't even come into being until 1997. They are not a part of the UNFCCC. This is one--I am just indicating what was on the agenda.

Number three, North Carolina, a grant to Appalachian State University for a Kyoto implementation plan. EPA was a part of this, and they were talking about CO2 emissions.

Number four, Emissions Marketing Association spring meeting, cosponsored by EPA, regarding greenhouse emissions market.

Number five, EPA rule requiring Missouri to have exhaust standards on carbon dioxide when EPA has no authority to regulate CO2. CO2 is not a pollutant.

Ms. Browner. There is no rule. I don't know what Missouri is talking about, but there is no rule.

Mr. Knollenberg. Well, we will get to that. And then, number six, which is--and I will stop at this point because the list goes on. Congressman McIntosh requested information from EPA on any rulemaking procedure that they might have with respect to greenhouse gas emissions from new motor vehicles.

I think it was Congressman Dingell that sent a letter to you. I have a copy of that letter, and I can enter that into the record as well. I might also add that we wrote your Agency some weeks ago regarding a couple of these matters and listed them in that letter. We have yet to receive a response. Now, what we have gotten, I believe, is a phone call that said, give us more time. We are willing to do that but, you see, what I am pursuing here is the fact that I believe you are crossing the line. And I want your help here because, frankly, if we can't get your someone to live up to and the agency to live up to the prohibition in the bill, then I would turn to you and say, when it comes to taxpayer dollars, what would you suggest that I do in terms of formulating, architecting language that would give you a clear understanding of where the barrier is.

KYOTO: KNOLLENBERG LANGUAGE

Apparently right now, the agency doesn't believe there's any reason for them to put the brakes on; they can move into those areas. And that prohibition in the bill, which is text of the bill, does not allow for that. So, maybe you can help me out with some language that you would suggest? The alternative would be for me to provide that language.

Ms. Browner. Well, Mr. Knollenberg, with all due respect, your language is very clear and we are not in violation of your language. The GAO has looked at your language, they have told us what your language means, and they have testified before Congress about what your language means. We do not have underway--and I will read back what GAO says the language

means--we do not have underway. ``Activities that are notice of proposed rulemaking.'' We don't have any rulemaking underway with respect----

Mr. Knollenberg. Did you spend any money?

Ms. Browner. For rulemakings? We don't have any rulemakings.

Mr. Knollenberg. No, no. Did you spend any money to send those people to those various spots around the globe?

Ms. Browner. We and you are well aware, as is the entire Congress, that prior to this administration, beginning in the Bush Administration, and during this administration we have participated in any number of programs looking at the issues of----

Mr. Knollenberg. Well, let me interrupt you because----

Ms. Browner. Sending someone to a meeting with the State Department, a meeting that we did not set up, a meeting that is an international forum, and happens to have the word ``implementation'' in it, is not a violation of your language.

Mr. Knollenberg. It has far more than implementation. It talks about specifics that were borne----

Ms. Browner. We have no rule.

Mr. Knollenberg [continuing]. Out of Kyoto.

Ms. Browner. We have no rule.

Mr. Knollenberg. All right, let me just suggest to you that you and I can probably come to terms on this outside of this meeting, but I want all of this to be entered into the record.

Ms. Browner. We are happy to respond.

Mr. Knollenberg. And I want you to respond to each one of those inquiries. Now----

Ms. Browner. Mr. Knollenberg, please, so that members of the Committee aren't confused. One of the things that you cite--I think it was the second thing you cite--is some meeting in Pennsylvania. Well, with all due respect, this was a meeting hosted by the Pennsylvania Department of Environmental Protection that we participated in. They called the meeting, they asked for our participation.

Mr. Knollenberg. It isn't the meeting, it is what you talked about in the meeting because now you are spending dollars, taxpayer dollars to get involved in implementation of Kyoto-type activities.

Ms. Browner. There was no implementation--the State of Pennsylvania can't implement Kyoto. So, how does going to a meeting hosted by the State of Pennsylvania----

Mr. Knollenberg. It is the taxpayer dollars, Ms. Browner. We are talking about----

Ms. Browner. We haven't spent a dime of the taxpayer's money on implementation.

Mr. Knollenberg. We will get to that because my belief is that you have.

Great Lakes Grants

Ms. Browner. Well, we have a disagreement.

Mr. Knollenberg. Now, let me go on to this--I don't know how much time I have, Mr. Chairman. Three or four minutes.

Let me go to the Great Lakes Initiative, and here I don't want to be confrontational. I don't mind being confrontational

on the other because I think we have a disagreement.

Ms. Browner. Story of the year. [Laughter.]

Mr. Knollenberg. We have a disagreement there and I would like to get to the bottom of it. Here is one that I would like to see take place because it is really something the President talked about in his State of the Union address. It is the Great Lakes Initiative.

Now, what I am concerned about, though, is I don't know what it is.

Ms. Browner. Okay.

Mr. Knollenberg. And in an attempt to talk to George Frampton, who is with the Council on Environmental Quality, and others they don't have anything but a vague understanding of what it is either.

Ms. Browner. You should have called me.

Mr. Knollenberg. Well, I would have liked to have called you the day after the President made that comment because nobody knows.

Ms. Browner. Well, we know. It is our program.

Mr. Knollenberg. Why didn't you tell Senator Levin, Senator Abraham, Joe Knollenberg, and my colleague on the panel here, Carolyn--she is not on this panel but--Carolyn Kilpatrick, Congressman Dingell, the Governor? Nobody knows what this thing is.

Ms. Browner. Well----

Mr. Knollenberg. Now, what I would just like to say to you, roughly what I know now is that it covers the Great Lakes and all the States that border and the cities and communities apparently within. But EPA administers that program. Now, we just discovered this a little later, not the night the President spoke.

Ms. Browner. Well, actually before the President spoke, the issue had been discussed publicly before the State of the Union.

Mr. Knollenberg. It was news to me. The point is that even if it were the next day we still didn't get any information until much later. And now, I would just like for you to tell me who does it affect? What States, what communities? Someone said it had a connection to the late '80s in some remote program that was brought up back in the late '80s.

Ms. Browner. I am not familiar with that.

Mr. Knollenberg. Well, Mr. Frampton is.

Ms. Browner. Well, he should tell me.

Mr. Knollenberg. Well, let's come to you. I want you to respond to that. I am sorry about the time, I wish I had 45 minutes, but I would like to have you respond to me as to why don't we know, why weren't we given the courtesy of knowing, and what effort did EPA make then and since then to let us know what it is? We might be able to talk about in glowing terms but we haven't because we don't know yet what it is.

So, if you would?

Ms. Browner. It is a new request to the Congress. It is highlighted in the President's budget request and specifically in EPA's budget request. It is a proposal that the administration has brought forward given our ongoing work in the Great Lakes to address a whole host of problems which you are very familiar

with. We are making progress. One of the great things about the Great Lakes Initiative is it has been a bipartisan effort. I hope that we can all find agreement on providing more funds for the Great Lakes.

What this \$50 million is about is recognizing that you have a lot of States and communities with individual programs designed to achieve water pollution reductions. This Initiative will, on a competitive basis, not every single State getting an assigned amount, but on a competitive basis provide some additional funds for some specific activities.

There is a match requirement so you know that the local government or the State is committed. It is a 40 percent non-Federal match. But it would be competitive.

One of the questions I received in another Committee--which I actually thought was a good question--is well if you divide it up between all the States, it is a relatively small amount and we are the first to agree. But there are some individual projects that with \$5 or \$6 million you can make a huge difference and perhaps even see that project completed, and we agree with that. And, if I might just finish by saying, when you have a competitive program, when you have a new program, the opportunity exists to let the best ideas come forward.

Obviously, we would do this with guidance to the applicants for the resources and we would be happy to work with you all in developing the guidelines

Mr. Knollenberg. I just have one quick question at this point and I will conclude for this round. This is \$50 million. The EPA budget is down. Is this going to take money from other areas of this budget that might be critical, frankly, to not just Michigan but the Great Lakes area?

Ms. Browner. No. The Great Lakes Project----

Mr. Knollenberg. Where does the money come from?

Ms. Browner. Well, every year we----

Mr. Knollenberg. You are beefing up some areas and you are taking down here.

Ms. Browner. And that is how we should run a budget process which is to look at what are the challenges that exist, what are the opportunities for further progress. The administration has come to believe that, given the progress that we have all made on the Great Lakes, there is now an opportunity to provide some additional, targeted resources through a competitive process.

The EPA's Great Lakes Program is not affected. That money is carried forward in this budget request. This would be an additional \$50 million for the Great Lakes States.

Mr. Knollenberg. By grants, right?

Ms. Browner. It would be a grants program; that is correct.

Mr. Knollenberg. To you?

Ms. Browner. Excuse me?

Mr. Knollenberg. To the administration, to the EPA.

Ms. Browner. Someone has to award them. We would be----

Mr. Knollenberg. Well, they have to actually control a little better, have to look and approve.

Ms. Browner. Yes, there is a process. The way we have run other processes, and what I would envision here is that it would be managed with a group of career employees in the agency evaluating the applications and ranking them. There are many

grants programs at EPA. For example, our Brownfields program has been a competitive program. There are no rules or regulations. There is guidance about the scope of what is an acceptable application. I have never personally been involved in a single one of those grant decisions. It is all handled at the career level by professional staff. That is what we would be proposing here.

Mr. Knollenberg. Okay. Thank you.

Thank you, Mr. Chairman.

Mr. Walsh. Thank you, Joe.

Ms. Kaptur.

GREAT LAKES PROGRAM AND GREAT LAKES GRANTS

Ms. Kaptur. I have so many questions. Administrator Browner, thank you, for your testimony this morning and for the fine work that you have done. I wanted to, on this Great Lakes Initiative, obviously, I live on the Great Lakes so I am very interested but what I would appreciate is a distinction in your testimony as to what is the difference between this new initiative and the ongoing activities of EPA relative to the Great Lakes? The size of those existing programs and how much of an increase this is and for what purpose, compared to what already exists?

Ms. Browner. I can briefly explain. As you are well aware, EPA has a Great Lakes program. It has been ongoing for over two decades now. That includes everything from the work we did with the governors to set the Great Lakes water quality toxic standards, to the technical assistance we have given to each of the States as they sought to develop their plans. Nothing about this proposal would affect that. What this is, is \$50 million--
--

Ms. Kaptur. May I ask, on the existing program what are the dollars that are devoted to the Great Lakes normally? What level is that?

Ms. Browner. What we refer to as our Great Lakes program averages about \$18 million and we maintain that in this budget request. What would be different about the \$50 million is it would go directly into local projects. I think there are areas of critical concern and, in fact, that may be what the 1980 reference is to. But these areas of concern which were defined in the International Joint Commission, the United States and Canada working together.

One of the good pieces of information that we have recently received is that, because of this proposal, Canada is considering doing something similar. Perhaps not on the same scale, but they are considering increasing their funding for specific projects around the Great Lakes.

So, this money goes to specific, in-the-field, if you will, types of programs--not into EPA staff, providing technical assistance or doing the kind of science that we normally do around the Great Lakes.

Ms. Kaptur. Well, I think that the one part I will agree with Joe Knollenberg on is that for those of us who are devoted to the Great Lakes and recognize them as precious world resource, it would be very nice to meet with those who are thinking about what this program should be so that we would

have a more complete understanding of where you are headed.

Because one of the thoughts that has run through my own mind, and this may be an impossibility, but, of course, we are a port authority community and I have often thought of using the combined bonding authority of ports along the Great Lakes, those that would be interested, to expand our ability to address environmental issues on the Lakes.

And \$50 million is a significant amount of money but the combined economic wallop of those ports and those port authorities deciding that they wanted to participate in something might be a small but parallel initiative to what you are trying to do with the Better America Bonds program.

In addition to that we have many lakefront cities, like my own, Toledo, where we do have community development dollars that flow to our communities. Our communities under HUD regulations are allowed to borrow against the repayment, the expectation that those dollars will be there in the future and they are earning proceeds from some of the prior CDBG investments that they have made around their own community. But if you were to combine a few of those mayors on a test basis and I think it might expand your own leverage in ways that maybe EPA might not have considered.

So, I would just throw that out and just also request a meeting with those of us who like to think of ourselves as champions for the Great Lakes.

Ms. Browner. We did do a Northeast/Midwest Congressional Coalition briefing several weeks ago and we would be happy, if that is the right group to work through, to set up whatever follow-up briefings could be helpful.

Ms. Kaptur. All right.

Ms. Browner. And, obviously, work directly with your office, too.

Ms. Kaptur. That would be tremendous. And I know we are holding a major hearing in our area on the Great Lakes in late May and we are working largely with the U.S. Department of Agriculture and several Midwestern States dealing with erosion and sediment into the rivers and lakes.

Ms. Browner. If we can be helpful.

U.S.-MEXICO BORDER POLLUTION

Ms. Kaptur. I was going to say if there was anybody from EPA that would be the sterling representative from EPA on that topic, we would certainly welcome them. It is a several-day conference involving many, many States.

The Maumee River, which I represent, I represent people as well as the river, we are the largest tributary into the Great Lakes and, so, we have a particular job to do for the welfare of all.

I wanted to move to another subject. Last year, we had asked questions at this hearing about pollution along the U.S./Mexico border. And at that time I had put in a request to EPA to identify the sources of border pollution that the funds requested were to be dedicated toward, for what purpose were they going to be used. And the reason that I asked that question, and I have not gotten an adequate answer, is that many of the industrial plants that are located South of the

border have now relocated from the United States. And many of those plants shut down here and one of the reasons they moved is because they could pollute in Mexico.

Here, in our country, we abide by ``the polluter pays'' concept. And the reason I asked the question about the source of the pollution was because I am very interested as to where it is being generated. And I would like to ask, again, what kinds of pollution are we being asked to clean up, relative to border infrastructure, and where are the point sources of that pollution.

And I have to say I was very disappointed in the lack of reply by EPA.

Ms. Browner. We are continuing to work through the State Department, with the Mexican Government to get you more specifics.

[The information follows:]

Other organizations involved in U.S. Mexico-Border Activities: the New International Organizations created at NAFTA: the Border Environment Corporation Commission (BECC) and the North American Development Bank (NADBank).

One of the challenges, as you are well aware, is that Mexico is in the process of developing a modern environmental system and we do work with them on that. But the kind of information that we can provide to you about U.S. pollution and U.S. businesses is not something that has been easy for us to get from our Mexican counterparts. We are continuing to work with them to get the kind of information that you want and that we think would be helpful.

Ms. Kaptur. I doubt that the Government of Mexico will give it to us.

But I can tell you I can go down there--my training is as a city planner--I can walk down every one of those streets--and I have done that in many of those maquiladoras down in Mexico--and some of those General Motors plants that are spewing out pollution into those ditches, and there are Japanese plants and there are Korean plants and there are Mexican plants and then all of that is coming back here. And we are being asked to clean it up. I really don't know what I need to do to prevail upon the administration to pay attention to this.

And if you are saying to me that we have to wait for the State Department, then we will wait until hell freezes over. So, I would like to know what additional authority you need in order to collect that information?

Ms. Browner. If we might respond for the record?

[The information follows:]

Agency Authority on Mexico Border

The issue of extraterritorial application of U.S. environmental laws is complex and the subject of some controversy. Enforcement of environmental laws in the transboundary context requires due sensitivity to attendant foreign affairs concerns. EPA's preference is to address transboundary pollution by working cooperatively with other countries involved. EPA is very active in working with Mexico

to prevent, reduce and control pollution in the border area under a variety of cooperative mechanisms, including the BECC, NADBank, La Paz Agreement, and Border XXI program. EPA shares the concerns of the Committee and will continue to work with the State Department to attempt to address these issues.

Ms. Kaptur. Has my time expired, Mr. Chairman?

Mr. Walsh. Actually you have about three or four more minutes.

SUPERFUND: CLEANUP PROGRESS

Ms. Kaptur. Oh, all right.

I wanted to ask on the Superfund question. You had mentioned that you had now cleaned up over----

Ms. Browner. What is today's number? As of today 680 total.

Ms. Kaptur [continuing]. 680 and how many do we have to go?

Ms. Browner. The NPL is----

Ms. Kaptur. And 500 of those are under your watch, right?

Ms. Browner. More than 500, yes.

Ms. Kaptur. Okay. That is a good record. How many more do we have to go?

Ms. Browner. About 600-plus. It changes.

Ms. Kaptur. All right. Give me just, relatively speaking, it sounds like we are halfway there, but have we cleaned up the teeny-weeny little ones and the big ones are ahead of us?

Ms. Browner. Well, that is part of the challenge. It is true that some of the more complicated ones have taken longer. But we have a pretty good record for working steadily across-the-board. We use a risk ranking system. So that in any given year we are looking at the various sites and where they are in terms of the final cleanup plans and then we rank them according to the risk and we move forward.

So, it is not as if only the easy ones have been done. But certainly ones that have more parties involved in them, present greater settlement challenges and can tend to take a little bit longer. On average, though, we have reduced the length of cleanup by two years, on average, now. And we have also brought down the cost by about 20 percent.

Ms. Kaptur. All right. We will ask a question for the record to give the American public a sense of how much we have accomplished and how far we have to go in a little more specific terms.

Ms. Browner. That will be fine.

Ms. Kaptur. So, let me just go back to----

Ms. Browner. Can I say one other thing about the Superfund, though? Under this administration we now have every single site moving through the system. It is important to understand that first we have to do the analysis of what the problems are. Then we locate the responsible parties. Then we try and get them to do the work. Then we develop the cleanup plan, then the actual cleanup occurs.

There is not a single site on the NPL list that is not somewhere in the process now; as opposed to when I came, the vast majority of them weren't even in the process. They were simply sitting.

Ms. Kaptur. Well, I think that is important for you to place in the record as well.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

U.S.-MEXICO BORDER PROGRAM

Ms. Kaptur. Let me just go back to the Mexico question one more time. Do you directly, does this Government directly fund any environmental activity in Mexico that comes from your budget?

Ms. Browner. We have the border projects. We fund the border projects, which you are aware of, through the construction grant funds, which we have funded for many, many years, which you are also aware of.

Ms. Kaptur. But on our side of the border, in the Colonias? Or are you talking about something on the other side of the border?

Ms. Browner. Both. The projects occur on both sides of the border through the NADBank and through other organizations that look at the needs and look at citing issues. These are wastewater treatment facilities, and drinking water facilities.

Ms. Kaptur. What would happen if we suspended that funding in Mexico?

Ms. Browner. What would happen is everybody would suffer. Americans would suffer, because these projects are designed to provide basic services, in some instances--and you have been there and you have seen them, just simple things like sewage treatment. These communities don't recognize a border, per se, in their day-to-day lives. Whether you build the facility on the Mexican side or the U.S. side, solving the problem is a decision you make on a community-by-community basis. The most important thing for the Americans is that we get these facilities built, and that we get these basic services provided from wastewater treatment to drinking water to garbage pickup. That is what these programs have been focused on, and they have been successfully so.

Ms. Kaptur. You know, Ms. Browner, I want to tell you a little story and I just want you to think about this and it will be my last comment on this round.

This is not about Mexico but about another country in Central America. When we brought up some workers who were making tee-shirts that the Gap and Penny's and other stores sell in this country, and we brought up the women workers, 17 and 18 years old who work in those plants.

And we took them to stores in our community, we showed them the very tee-shirts that they had made. They were shocked to find them on the racks selling for a minimum of \$20 apiece. They had been paid 12 cents a shirt.

And those girls have to work in plants that are behind barbed wire, and they have to file in every morning and come back out. They work for subcontractors to major retailers, so, that fingerprints aren't on the labor contract or anything else like that. And then those goods come up here.

Mexico is no different in those maquiladoras. And the companies that go down there, whether they are U.S. companies,

whether they are Korean companies, whether they are Japanese companies have a new form of serfdom that they found in Mexico. And we are aiding and abetting that process by asking the American taxpayers to clean up the mess of those companies.

And I very much want to work with you--I would be willing to go down to hearings, South of the border, with the heads of those companies. I would like to publicly embarrass them in the global environment for what they are doing because I have seen the waste that comes over that border and where it is coming from and there has got to be a better way. If our State Department can't do it, then we had better find a better way to get these companies and make them pay the cost of what they are doing.

They are certainly not giving the benefits of this trade to their workers. And they are defiling the environment down there. Smelters that have moved down there, out of Arizona, and all these different companies and a lot of them are U.S.-owned. And we had better get them to fess up. And I am very upset about this. And it is not getting any better.

Since NAFTA, the environmental degradation South of the border has gotten worse. And just to say it is the State Department's job, I think is an abdication of the duties of the Environmental Protection Agency of this country and if you don't have sufficient authority to deal with this, then I want you to tell me how I can get it to you.

Thank you.

Ms. Browner. Thank you.

Mr. Walsh. Mrs. Northup.

LOUISVILLE NON-ATTAINMENT

Mrs. Northup. Thank you.

Thank you, Mr. Chairman. I had a meeting going on across the hall, so, I had to step out briefly.

Secretary, in my district, Louisville, Kentucky, we have for a long time suffered with trying to get into attainment in terms of air pollution. In fact, for years, you could stand in my yard and look downtown and not see the buildings. Today, you can do that. And there is a lot of difference. But still, for a variety of reasons, weather, how the wind comes from other communities and so forth, gaining full attainment has been very difficult.

We were out of attainment when the deadline came. We are on a plan to be within attainment until 2003. We have not gotten an answer from the EPA about whether or not they intend to give us that extension, and how exactly that would be accomplished.

Ms. Browner. Well, we did already give one extension and we have recognized repeatedly that the issue is a multi-State issue. In November, of last year, Indiana and Kentucky submitted a joint attainment demonstration and we have been working with the Kentucky Division of Air Quality to complete our review of that. If any kind of changes are necessary, we hope we can work with them to accommodate those changes.

We have been able to work these multi-State issues out in any number of instances. We hope we can work them out here. We are in the process of trying to do that. What we want is a plan in place. That is the best solution for everybody to have, a

State Implementation Plan. And, as I said, in the vast majority of areas now we have resolved this. We are continuing to do everything we can to resolve it and get a plan that the State of Kentucky and the State of Indiana are both comfortable with.

Mrs. Northup. When do you expect to have a decision on that?

Ms. Browner. Well, I am fairly certain that they are aware of our preliminary review and any concerns we may have with that preliminary review. We are trying, in an informal setting, to work those through. If you could give us a little bit of time I think that might be in everyone's interest. We can go into a very formal process but I don't know that that necessarily leads to the best dialogue and the best resolution of something of this nature.

So, a little bit of time, could be very helpful.

EFFECT OF GUIDANCE DOCUMENTS

Mrs. Northup. Okay. Let me ask you a little bit about the peer-review process that you all have. It is my understanding that you are publishing guidance documents and interpretative opinions and then implementing them as though they are de facto rules, promulgated under the Administrative Procedures Act. This is at least some of the concerns that I hear. And I just would like to get some clarification on it.

First of all, what legal effect does the EPA interpretative rules policies and guidance documents have?

Ms. Browner. Well, first of all, it is common daily business at EPA that a company, a State, or a city calls us or writes to us and asks us to explain something. We write back. It might be guidance that we provide. If we get the question more than once we turn it into guidance so that people can have some general understanding of what we mean.

It is non-binding. But: The business community, in my experience, finds it very helpful when we can have that kind of exchange. I know there are some up here who are suggesting that somehow or another we shouldn't be able to do that. But if we can't answer a question, when someone may be confused, the whole system is going to get ridiculous.

Mrs. Northup. Well, I would agree with you. I think that the problem comes because there are those that believe that the guidances overreach the legislative intent or actually are formulating new policies that go beyond what was ever intended by the law, what previous these guidances have--you know that these are really initiatives as much as guidances.

Ms. Browner. I would be happy to look at them personally, if there are some specific examples that people have brought to you where they feel like a guidance is more than answering a specific question that has been posed to us and in some way goes beyond our authority. But guidance for anybody that works with the business community, that works with State and local Governments, and that works with the public in the way that we do, is a very important part of how we give people answers to very real questions they have, so they can continue in their business.

Mrs. Northup. So, basically what you are telling me is, is that you are absolutely convinced that all of your guidances,

all of your other interpretative rules are not, do not have any new initiatives, don't go beyond any previous guidances?

Ms. Browner. When we develop, for example, a permitting program--and it will vary under different statutes--we are required in setting those legal obligations to go through the regulatory notice and comment process. We don't set standards in guidance, obviously. A drinking water standard is not set in guidance. It is set through a public notice and comment process, as we are required to do.

Now, it may well be that once--I will just use this as an example--a drinking water standard is set that a particular drinking water facility may write to us and say, well, in looking at this, we need some better understanding of whether technology A or technology B is what you were talking about. We would respond to that. But that response has to be within the scope of that notice and comment process.

Mrs. Northup. Well, let me give you a very specific example that staff is so quick to produce.

Ms. Browner. If they have a copy, it would be helpful if I would be able to look at it.

ELECTRIC UTILITIES PERMITTING

Mrs. Northup. Well, let me talk about the permitting for the electric utilities that now have claims that they have violated the Clean Air Act when they upgraded or replaced equipment at their power plants over the last 20 years. Clearly, this rings a bell.

Ms. Browner. Oh, I am just surprised that they would suggest that this is a question of guidance. We have a very----

Mrs. Northup. Or a change in policy.

Ms. Browner. It is not a change in policy. The Clean Air Act is abundantly clear. These companies were grandfathered in so long as they maintained operations as is. In 1990, when Congress amended the Clean Air Act, there was a recognition that many of these older, grandfathered facilities were going to go out of business and, therefore, would be ``allowed to maintain their activities.''

They are not----

Mrs. Northup. But the fact that they haven't gone out of business.

Ms. Browner [continuing]. Maintaining their activities. This is like if I have a car, maintaining my car is changing the oil, right? It is getting it tuned up. It is replacing the spark plug. It is not replacing the engine. They are replacing the engines and that is what we have alleged in our enforcement cases and we will pursue them.

Mrs. Northup. But isn't this a total change from----

Ms. Browner. No. Absolutely not.

Mrs. Northup [continuing]. Over years?

Ms. Browner. No. Absolutely, categorically not. We have settled one of these enforcement actions. One company has come to the table and we have settled and they have entered into a binding legal obligation to reduce their pollution.

Mrs. Northup. Well, you know, I guess that for those of us in Kentucky there is the question of does EPA really want to push power out of--if you had to look at the energy picture, do

you picture coal being part of that, that picture?

Ms. Browner. Absolutely.

Mrs. Northup. And it seems to those of us who are looking at this, I mean we have energy plants in Kentucky that have gone beyond what they were required to do. And I think their feeling is, is that nothing they would have done would have been enough.

Ms. Browner. They have very clear requirements under the law. If they are making significant changes then they must meet Clean Air standards. Routine maintenance does not include million-dollar investments in new generators. Those are the kinds of activities that we have alleged in our enforcement actions.

Mrs. Northup. Did you change your interpretation of key exemptions to the air pollution reporting requirements?

Ms. Browner. Air pollution reporting requirements? I am not sure we know what you are talking about.

If there is a letter, we are happy to respond to it.

Mrs. Northup. Okay. But you don't feel there was any need to go through the rulemaking process?

Ms. Browner. To file an enforcement action? No.

Mrs. Northup. Thank you, Mr. Chairman.

Mr. Walsh. Thank you.

Mr. Cramer?

FOSSIL FUEL COMBUSTION

Mr. Cramer. Thank you, Mr. Chairman.

Welcome back to the Committee. I am down here on the far end, so, I hope I am not hard to hear. And I had to come and go as sometimes is the case, so, I hope I am not asking about issues that you have already been asked about.

But I wanted to get you to talk about the report that was finally delivered to Congress on the waste from the combustion of fossil fuels delivered in March of last year. And that was a 19-year study as a consequence of the efforts of Tom Bevil from an amendment I think that was passed back in 1980. It is my understanding that that report included a preliminary recommendation that most of the waste should not be regulated as Federal hazardous waste but should remain subject to State regulation.

Where are we with that? Are you reconsidering that or are you about to do an about-face on that and, if so, why?

Ms. Browner. The report to Congress under the Bevil Amendment, what is commonly referred to as Bevil Waste, required us to go and look at a list of waste and determine whether or not there were adequate protections in place. What we refer to as fly ash or fossil fuel combustion waste, was one of those wastes, and we did make a report to Congress. I think it was last March.

The report made a tentative conclusion. It did not reach a final conclusion. Since that time, we have been looking at our analysis, we have been hearing from the public on our analysis, and we have recently asked a court for a 30-day extension.

Mr. Cramer. Which would get you to when?

Ms. Browner. April 10th. This is a large volume of waste. Over 100 million tons per year. I will be honest with you, we

do have some concerns about how this waste is managed. The report to Congress identified several areas where additional improvements were warranted. We suggested both nonregulatory and regulatory steps that could be considered to address the risks.

We have found that while State programs have improved, there is still a significant segment of the industry that have not lined their waste disposal landfills. There is a great difference across the country. It is not just one program or of one view. Given what we have discovered and the differences from State-to-State in terms of the level of protections, we are looking at what our final decision should be and felt like we needed more time.

Can I say one thing?

Mr. Cramer. Of course.

FOSSIL FUEL COMBUSTION: BEVIL AMENDMENT EXEMPTION

Ms. Browner. On other Bevil Waste analyses, where we have felt like something was necessary, we have in other areas been very careful to recognize the differences between States and highlight those States that we think have good programs and then work to bring the other States up to that level. That is something that we are looking at here.

Mr. Cramer. So, you have an extended deadline to----

Ms. Browner. April 10th.

Mr. Cramer [continuing]. Within two or three weeks from now. So, what do you expect to happen between now and then? I mean what will you be ready to do by then?

Ms. Browner. We have to make a determination.

Mr. Cramer. Have you put your interagency review on hold?

Ms. Browner. Yes. We have to make a determination. We are under a court order to make a determination as to whether or not this waste can continue with its exemption under the Bevil Amendment.

Mr. Cramer. And you expect to make that decision by that date?

Ms. Browner. We have to make it by April 10th.

Mr. Cramer. You have to make it by that date?

Ms. Browner. Otherwise, I guess I go to jail.

Mr. Cramer. Well----

Ms. Browner. Or Tim goes for me.

Mr. Cramer. What significant----

Ms. Browner. I should say. You asked about whether we are in an interagency process that we are talking to all of the other interested agencies and we have been for some time now.

Mr. Cramer. You have been but I understood that that had been put on hold?

Ms. Browner. No, we are continuing to talk to them as we look at all of the information.

Mr. Cramer. All right. Either now or later, you may not be prepared to answer this now, but what significant new information have you been reviewing?

Ms. Browner. When we first started looking at the quality of State programs, many States were looking at upgrades in their programs. I think it is fair to say that hasn't been achieved uniformly. Some States are in better places than

others and we would be happy to go over that with you. But it has not been uniform. This is a huge amount of waste.

Mr. Cramer. All right. Because it is a huge amount of waste, and is it not--if I am putting this right--different kinds of waste?

Ms. Browner. In terms of what is in the ash and will it vary from facility to facility?

Mr. Cramer. Yes.

Ms. Browner. It may vary. It would depend in part on what you are putting into the facility. For example, what kind of coal you are burning?

Mr. Cramer. Right.

Ms. Browner. If we were to decide to require a certain minimum level in any State program, that would probably have to be taken into account. That is true.

Mr. Cramer. Well, I will look forward with great interest.

Ms. Browner. The components of this waste are things such as arsenic, chromium, lead, mercury. It has a lot of components and in other areas these are things we regulate the disposal of. And, again, under the Bevil category of waste, what was envisioned and what we have certainly looked to in the past, is to help States maintain programs for appropriate disposal. And, again, I want to be clear, we do think there are some States that have made a lot of progress in improving their programs. Unfortunately, there are other States where that has not occurred.

Mr. Cramer. Can you say what might be the main determining factor in making a decision?

Ms. Browner. Maybe we can provide that in writing. There will not only be one factor in the decision.

Mr. Cramer. All right.

Ms. Browner. Under the Bevil Amendment we are required to look at a variety of factors in determining whether or not this should be a covered waste.

[The information follows:]

Fossil Fuel Combustion--Regulatory Determination

Listed below are the factors taken into consideration when developing a regulatory determination.

RCRA Section 8002(n) identifies eight study factors that we must take into account in our decision-making. These are:

1. The source and volumes of such materials generated per year.
2. Present disposal practices.
3. Potential danger, if any, to human health and the environment from the disposal of such materials.
4. Documented cases in which danger to human health or the environment has been proved.
5. Alternatives to current disposal methods.
6. The costs of such alternatives.
7. The impact of those alternatives on the use of natural resources.
8. The current and potential utilization of such materials.

Also, in developing the Regulatory Determination, we are directed to consider studies and other actions of other federal and State agencies with a view toward avoiding duplication of

effort (RCRA Section 8002(n)). In addition to considering the information contained in the Report to Congress, EPA is required to base its regulatory determination on information received in public hearings and comments submitted on the Report to Congress (RCRA Section 3001(b)(3)(C)).

TMDL COSTS

Mr. Cramer. I know my colleagues have brought up the issue of TMDL and the cost to the States, and the private sector to accomplish this goal. But that is an issue of great concern to me, especially from the point of view of how can the States possibly perform the TMDLs?

So, if you have already given that information I will rely on that.

Ms. Browner. We also said we would provide some more information in writing. We don't disagree. In fact, as a part of our proposal we did put out cost numbers on the States running these programs. We believe that this is a program best run by the States. We don't want to be in the business at EPA of running it. There are existing programs in the States that this would be built on but there is an additional cost to the States. If they were doing all of the existing programs that they are committed to, I think we estimate that the base cost to the States for clean water programs of this sort would be about \$70-to-\$90 million.

We should be clear about this. We don't think that they are doing everything they have committed to. We don't think that the States are investing the resources into the programs that they have already committed to.

TMDLs would be an increment beyond that of approximately \$10-to-\$25 million, but you have this problem: If they are not doing the base that they are already required to do, the cost to them, obviously, will be greater. Then there is a separate cost, which is the cost of things like the BMPs that might be used to achieve the pollution reductions, and we do have some programs and we are asking for increases in those programs that can be used for BMPs. But certainly there is a cost to the actual sources of pollution that will have to be reduced.

Mr. Cramer. All right.

I think it is a setup for the States to fail.

Ms. Browner. Because of a provision in the Clean Water Act, judges all over the country are forcing us to implement it. You don't want us doing this. You want the States to do this on a day-to-day basis. So, let's all work together to give them the tools they need to do it. I ran a large State agency, I know how challenging something like this can be, but I can also tell you as someone who ran a large State agency, I wouldn't want the Federal Government doing it. I would want to be doing it.

Mr. Cramer. But if it is such an impossible setup, and the States are going to be sued, and they are going to have to go through those nightmarish---

Ms. Browner. No. The problem is we, the EPA, are being sued right now and we are trying to get a program in place that will allow us to defend the lawsuit so the States can be in control.

Mr. Cramer. All right.

Ms. Browner. The Clean Water Act is written so the cause of

action rests against EPA, not against the States. So, we end up having to enter into agreements about what the States are going to do.

Mr. Cramer. Well, I will look forward to further dialogue on that.

Ms. Browner. Thank you.

Mr. Cramer. Thank you very much.

Thank you, Mr. Chairman.

Mr. Mollohan. Will the gentleman yield?

Mr. Cramer. I would be happy to yield.

Mr. Walsh. Unless there is an objection, I don't see why we couldn't. His time is up but is there any objection?

[No response.]

Mr. Walsh. Go ahead.

FOSSIL FUEL COMBUSTION

Mr. Mollohan. Just one follow-up question. With regard to the gentleman's questions about coal-fired utility waste disposal----

Ms. Browner. The ash.

Mr. Mollohan [continuing]. I understand you have been sued in regard to that and the court has required that you come up with a final determination.

Ms. Browner. Yes.

Mr. Mollohan. Now, my question----

Ms. Browner. We got an extension.

Mr. Mollohan [continuing]. Is and the gentleman probably asked it, and you probably answered it, but I want it to be clear. As you make that final determination, what information would you come in contact with that would change your tentative conclusion? And I would just like to read that for the record. ``The Agency has tentatively concluded that the co-managed waste generated at coal-fired utilities, including petroleum, coke combustion wastes, as well as waste from other fuels, co-fired with coal, generally present a low inherent toxicity, are seldom characteristically hazardous, and generally do not present a risk to human health and the environment. Current management practices and trends and existing State and Federal authorities appear adequate for protection of human health and the environment.''

Have the facts that generated that tentative conclusion remained the same or have you come in contact with or are you now privy to any facts that might alter that conclusion?

Ms. Browner. I will give you two examples. One is that----

Mr. Mollohan. Two examples of what?

Ms. Browner. Of a new level of information. One is we have a far better understanding of State programs, of the individual State programs, in terms of disposal.

Mr. Mollohan. Now, I heard that answer to him. If we can just be interactive here a little bit. I heard that answer to him and that is the reason I asked this. This isn't a programmatic issue, this goes to the toxicity----

Ms. Browner. That is one component.

Mr. Mollohan [continuing]. Of the substance.

Ms. Browner. We also have to look at what the existing programs are in terms of adequately managing the waste.

Mr. Mollohan. But just with regard to the inherent nature of the material, which is the statement I read to you, have any facts come to your attention that would change that conclusion, perhaps?

Ms. Browner. Perhaps. That is right, because we have not made our final decision.

Mr. Mollohan. Yes. I want to get into that if you are going to answer yes.

Ms. Browner. We do have what we refer to as new damage case reports which we are analyzing that raise issues of groundwater contamination, that we have not been previously aware of and we are analyzing those. We would be happy to provide those.

Mr. Mollohan. Okay.

Thank you, Mr. Chairman.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Walsh. Thank you. Mr. Frelinghuysen is next, then following in order will be Mrs. Meek, Mr. Goode, Mr. Price. And we have also had a request from a member of the committee, although not a member of the subcommittee, Mr. Dickey, to ask questions, and I have acceded to that request on the condition that all the other members have their opportunity to ask questions first and Mr. Dickey would go at the end.

I will need to leave about 11:30, and Mr. Frelinghuysen will then chair the Subcommittee. We can proceed.

Mr. Frelinghuysen?

MTBE

Mr. Frelinghuysen. Thank you, Mr. Chairman. Bon voyage.

Ms. Browner. That is not what you say to the Irish.

[Laughter.]

Mr. Frelinghuysen. Well, you tell me what I should say in Irish, and I will do it.

Madam Administrator, I want to get back to an issue that was raised earlier. Many of our constituents are anxious, apprehensive, in some cases angry about MTBE, methyl tertiary-butyl ether, which we all know is a gasoline additive that by all reports is polluting water supplies across the country from New Jersey to California. California has at least 10,000 contaminated sites; New York, 1,500; New Jersey has 500. By banning this fuel additive, I believe and many believe we can prevent the spread of this suspected human carcinogen to other sources of drinking water.

I am here today to ask why the Environmental Protection Agency hasn't taken this action to date given all the concern and credible evidence. Why we haven't moved to ban this additive?

Ms. Browner. Well, first of all, Mr. Frelinghuysen, we share your concern. We commissioned a blue-ribbon panel that reported back to us at that time in June. We called on Congress to amend the Clean Air Act to solve this problem. This problem is in part a factor of the 1990 amendments to the Clean Air Act

which requires that gasoline sold in the most polluted cities include a 2 percent oxygenate. Within the industry right now there are essentially two ways to meet that congressional requirement. One is through the use of ethanol and the other is through the use of MTBE.

We are very concerned about MTBE, and we are working within the Administration right now to look at all of the tools that may be available to us to address this problem absent congressional action.

We continue to believe, as we did back in June and as we have said repeatedly since then, that the best solution to this would be a targeted fix to the Clean Air Act, retaining the opportunities for ethanol, which we think are important, ensuring the clean air benefits that have come through the reformulated gasoline, but providing flexibility to the refiners so that MTBE does not continue to be a part of the reformulated gas program.

MTBE: REGULATORY AUTHORITY

Mr. Frelinghuysen. Some of us believe you have the ability now. If this is a public health hazard--and certainly the public perspective is--then you can be sure that many people feel that you can act unilaterally and the President can act. I checked with the Congressional Research Service at the Library of Congress that states that there are several authorities under which your Agency might act. I assume you are reviewing some----

Ms. Browner. We are evaluating those, yes.

Mr. Frelinghuysen. One is that the EPA has the authority under Section 211(c) of the Clean Air Act to regulate or prohibit the sale of fuel and fuel additives.

The second authority is that EPA has the authority under Section 303 of the Clean Air Act to take emergency action basically by seeking a restraining order in the U.S. district court and temporarily issuing such an order on EPA authority to protect public health, welfare, or the environment.

Thirdly, EPA has the authority under Section 6 of the Toxic Substances Control Act to prohibit or limit production or distribution in commerce of a chemical substance, and barring that those are not enough, the President could issue an executive order. With all due respect--and this is not a political shot--this President has issued more Executive Orders than any of his last five or six predecessors, and some people question whether, in fact, all of those Executive orders are necessary.

To this person's mind--this is an option as well--the President ought to take some action because I think there is a crisis here. People are angry and apprehensive, and I would like to know what we are going to do about it.

Ms. Browner. Mr. Frelinghuysen, we want this fixed. With all due respect, Congress could change the law. That would make it go away tomorrow. We are looking at every----

Mr. Frelinghuysen. But these are reasonable options. We know how bound and determined you are when you want your way, and we respect that.

Ms. Browner. In the legal constraints. Under the Clean Air

Act authority----

Mr. Frelinghuysen. With all due respect, these citations I assumed you have looked at----

Ms. Browner. Yes, we have.

Mr. Frelinghuysen [continuing]. And if you have considered it to be a true health crisis, you could be sure that somebody would invoke one of these authorities in which to act.

Ms. Browner. Let me just mention, the Clean Air Act provisions that you cite we looked at, and here is the problem we have with them. They are about the quality of the air people breathe. The MTBE challenge isn't breathing. It is water. So we have to find a way to get to that problem.

Mr. Frelinghuysen. Carol, I have no doubt in my mind that if you want to find a way, you can find a way to do it. What specifically has the Agency done to send to Congress some language or some changes that would help us expedite this process?

Ms. Browner. I have been up here any number of times meeting with any number of people, largely on the Senate side-- I have not received requests on the House side--as to what we think would be appropriate changes in the Clean Air Act. I am happy to come up on the House side and do the same thing.

Mr. Frelinghuysen. Tell me if I am incorrect. There is actually, I understand, through the House Health and Environmental Subcommittee--they recently held a committee meeting. Reference was made to a 1987 EPA memo acknowledging the danger of MTBE prior to the implementation of the Clean Air Act Amendments of 1990. This memo questioned you----

Ms. Browner. Let me tell you what I did----

Mr. Frelinghuysen. Let me just read----

Ms. Browner. I wasn't there in 1987.

Mr. Frelinghuysen. Yes, but you are responsible for knowing----

Ms. Browner. I convened a blue-ribbon panel. I have agreed----

Mr. Frelinghuysen. Yes, I understand that----

Ms. Browner [continuing]. With the panel that Congress should act.

Mr. Frelinghuysen. But your Agency has, one has to assume, institutional memory and responsibility.

In 1987, and I quote, ``Known cases of drinking water contamination have been reported in four States. These cases affect individual families as well as towns up to 20,000 people. It is possible that this problem could rapidly mushroom due to leaking underground storage tanks at service stations. The tendency for MTBE to separate from gasoline mixture into the groundwater could lead to widespread drinking water contamination.''

I assume when you appeared before that committee there must have been some----

Ms. Browner. I didn't appear.

Mr. Frelinghuysen. Well, there must have been some acknowledgment within your overall bureaucracy of this memo.

Ms. Browner. Mr. Frelinghuysen, we are happy to have the people who testified talk to you. Can I just say something? We don't have a disagreement here. I want the substance gone, and rest assured that I am doing everything within my legal power

to figure out how to do that. But why don't we all sit down and craft legislation? Why don't we call a meeting? Why don't you call a meeting and I will be here----

Mr. Frelinghuysen. Many of us feel you have the authority to do it now, and if it is a health crisis, then somebody in your department or the President----

Ms. Browner. And we are----

Mr. Frelinghuysen [continuing]. Ought to act.

Ms. Browner [continuing]. Analyzing those provisions. We will make a decision, and we will make the public aware of that decision. I have not abdicated my responsibility for public health----

Mr. Frelinghuysen. I never used the expression ``abdication.'' You used that expression. But I think the concern is legitimate, and I know enough about your modus operandi that if there is a crisis out there, and I respect your abilities, you can say to the White House we have got to do something.

Ms. Browner. With all due respect, Mr.----

Mr. Walsh. This conversation is going to have to be continued after this vote. You can think about thoughtful responses to this line of questioning, and we will return shortly.

[Recess.]

Mr. Frelinghuysen [presiding]. The meeting will come to order, please.

It is a pleasure to recognize Mr. Price.

FY 2001 INITIATIVES

Mr. Price. Thank you, Mr. Chairman.

Ms. Browner, welcome to the subcommittee once again. I'm glad to see you. I want to start out by just commending you on a couple of initiatives that EPA has undertaken which I think are highly promising and show some creative thinking about new ways of doing things, such as forming public-private partnerships and putting the Government in a new kind of facilitating role. These Better America Bonds I think, in particular, are a great idea. It is a similar concept that we are trying to apply to school construction. And what you are proposing to do is to dedicate \$700 million over 5 years to provide communities with additional resources, not by telling them when or how or whether to issue bonds, but saying that when they choose to do this for environmentally appropriate purposes, the tax code will be their friend and it will help them stretch the dollars further.

I think also the clean air partnership funds are a good idea, and are strongly supported in our State, where you are giving incentives for cities, States, and tribes to partner with the private sector, the Federal Government, and each other to provide cleaner air to local citizens, demonstrating smart multi-pollutant strategies to reduce air toxics and soot and smog and greenhouse gases to protect our climate and health. So we commend you for that, and I think it is a very promising approach, an innovative approach, and I hope that we can move it along.

RESEARCH TRIANGLE PARK

The project we have talked about when you have appeared before the Appropriations Committee for the last 8 years is the EPA facility in Research Triangle Park, North Carolina, a wonderful facility which is under construction now, well underway, and we are looking forward to dedicating it early next year.

I know the facility it is paid for now, and I am glad to report that. Is there anything we should know about the current status of that project and any implications for our deliberations this year?

Ms. Browner. Well, first of all, I just want to thank all of the members of this committee for their support. We are getting a state-of-the-art facility. It is something that will be incredibly helpful to us and the work that we do. We do it at RTP but it affects literally the entire country.

The good news is that we are on schedule. Some of the components that were a challenge have been resolved in terms of the High Bay facility. The other good news is we have moved the supercomputer, and that was a cost savings to the taxpayer. We have it there, and when the building is done, we will be ready to bring it on into the new facility.

So I think unless there is something I don't know that maybe you know, everything is progressing. It is happening.

Mr. Price. Well, it is an interesting, awe-inspiring construction site--the scale of this operation and the environmentally friendly techniques that are being used. And also I do commend you on the handling of the computer center question--the movement of the equipment to North Carolina, and the additional move scheduled within a couple of years. Even with those dual moves, we have saved the taxpayer money and, I think, enhanced those computer services.

Ms. Browner. There is included in this budget request, while it is not for construction, funds for the move, and for decommissioning the sites we have been in. So there is a modest request for those activities in our budget request.

Mr. Price. To actually pay for the move once it occurs.

Ms. Browner. Yes, move the people.

food quality protection act (fqpa)

Mr. Price. Right. Now, let me take the remainder of my time to ask you about another question that has come up in past hearings and ask you to respond to some questions that have been raised about the Food Quality Protection Act and your implementation of that ``Act.'' We have corresponded a good deal about that, as have other members.

I am afraid I do continue to hear some concerns from growers and those in the pesticide industry about EPA's implementation of that law, and I would just like to ask you about some of those concerns. They seem to center around a fear of losing pesticides and pesticide uses unnecessarily because, they suggest, decisions about re-registrations under FQPA are being made on the basis of incomplete information about exposure to pesticide residues and actual levels at which pesticides are used.

Now, the central conflict in implementing this law--and I

know you are under some conflicting demands here--seems to be the incompatibility between strict adherence to the timetable for reviews of pesticides laid out in the statute, while at the same time ensuring that you have complete and reliable information on which to base the decisionmaking.

The law, as I understand it, permits EPA to postpone deadlines for reviewing pesticides if inadequate information exists on which to base decisions and permits EPA to use data call-ins to require manufacturers to produce the necessary data for good decisionmaking.

For example, just quickly, one example I have been given is the lack of reliable information on residential exposure to pesticides. The FQPA statute instructs EPA to establish safe tolerances for pesticide residues for dietary exposures and all other forms of exposures for which there is reliable information.

Yet, in an October 1998 Federal Register notice, EPA states that, ``Because highly specific residential exposure data are generally lacking and there is not wide understanding and acceptance of existing models and assumptions, several work groups and task forces are working to generate data and improve methods for conducting residential exposure assessments.''

And yet you are facing these deadlines. In the same document you state that, ``The Indoor Residential Joint Venture Task Force is expected to have a Phase 1 draft document available in March of 1999, Phase 2 completed by October of 2000.''

I assume these documents are designed to address the deficit of information about residential uses and exposures.

I know that in the absence of chemical-specific information about residues and uses, you sometimes use what you call standard operating procedures, which are sometimes called default assumptions. Is that right?

FQPA: RESIDENTIAL AND FARM USES

Ms. Browner. I don't know that we have used them. This question has to be answered in two ways. One is what we are doing generally to increase the information we have on residential or in-home use and then chemical-specific, because it does vary. In some instances, we have much better in-home use numbers on specific chemicals than we have in other instances.

Mr. Price. Why don't you just proceed to address the broader issue of how you are going to address this lack of data about residential exposures, and then to what extent you would be relying on the SOPs.

Ms. Browner. The work we are doing right now is focusing on organophosphates, which are some of the older and more widely used, frequently World War II-type chemicals. The process that we are engaged in there is a very public process. We do a risk assessment. We make that publicly available. We work hand in glove with USDA to understand both what the farmers' concerns may be, but also what the real use information is. This has been one of our challenges that you and I have discussed before, finding out what goes on in the field.

On the residential use issues, peer science review, we have been making changes in how we do the residential reviews. We

have issued a data call-in on residential exposure on lawns. We are awaiting that information. We do have a residential exposure task force underway.

But as I said, we have more detailed information on some of the residential chemicals than we have on others. Where we have that kind of information, depending on what the risk may be, whether or not the risk levels are exceeded by the use, we may be moving forward with decisions.

All of our decisions have to be supported by the data that we are required to have.

Mr. Price. So you are using some of this data call-in authority?

Ms. Browner. Yes, for lawns, for example, in the residential arena we have issued a data call-in on lawn use for members of the community. We are trying to understand how much of certain chemicals are actually being used on residential lawns. We may know total sales, but what we need to know is where and how they are being used.

Mr. Price. Well, to what extent are you having to rely on these default assumptions or SOPs?

Ms. Browner. On the decisions we have made to date under the organophosphates, we could provide in writing if default assumptions have been used. Apparently, we have not used default assumption at all. In fact, the two organophosphates decisions to date have been based on real data.

[The information follows:]

EPA's Use of Default Assumptions in Its Reassessment of Tolerances for Organophosphate Pesticides

EPA's two Organophosphate Pesticides decisions (azinphos methyl and methyl parathion) have been based on risk reduction actions from dietary risk assessments performed under Section 408(q) of the Federal Food, Drug and Cosmetic Act, as amended, by the Food Quality Protection Act of 1996. At issue is the extent to which EPA relied upon ``default assumptions'' when assessing the risks posed by each of these pesticides. EPA's two Organophosphate Pesticides decisions were based on ``real data,'' not default assumptions.

Mr. Price. All right. Well, obviously, what we are dealing with here is a difficult situation where you have some time lines you need to meet, and the public safety requires that you are attentive to those. At the same time, we want to avoid unnecessary regulation and unnecessary restrictions on products available to farmers, consumers, builders, and others.

So if you could bring us up to date on that, perhaps using the question of residential exposure as a kind of case study and how this is working and the way you are balancing these concerns, that would be very helpful to us. I know I have limited time here today, but I do think the Agency--based on my impression from talking to lots of people about this and observing this for some time now--is going to have to do more to address the concerns about the adequacy of the data and the assumptions that are forming the basis of FQPA decisionmaking. And I hope you are going to redouble your efforts to engage stakeholders in this process.

Many of them, as I am sure you realize, are right now rather alienated from the process and feel that there is considerable uncertainty about how this process is working, what is going to be required of them, and what kind of information is going to be used for the eventual standards that are put in place.

Ms. Browner. This has been a significant undertaking for the agency. I am obviously disappointed if there are people out there who feel like they haven't been engaged. We spend huge amounts of time working with the individual companies, working with the agricultural community, before any decision is made.

We have not yet made regulatory decisions on any of the organophosphates that are designs as in-home-use chemicals. We do have one currently scheduled for a decision. It is imminent. If you have some specific questions about that one, we would be happy to make sure your office knows when we move forward with a proposal or of any discussions we may be having with the industry about the product. But as of this point, our focus on the OPs has not yet included any of the chemicals that are used in-home.

Mr. Price. All right. Thank you. We may have some additional questions that we submit for the record to carry this forward. Thank you.

Mr. Frelinghuysen. Thank you, Mr. Price.

The gentle lady from Florida, Mrs. Meek.

Mrs. Meek. Thank you, Mr. Chairman.

Welcome, Administrator Browner. It is always good to hear you and the members of EPA. I greatly admire your efficacy as a leader of this many times maligned Agency, but in the 7 years I have been here, you have held your own, and the Agency has also, and I am glad that you have that kind of knowledge to do that, particularly the fact that you are a native Floridian and you have shown these folks in Washington what it takes to lead an agency.

Ms. Browner. Thank you.

Mrs. Meek. I thank you for it.

Mr. Chairman, if you would allow me just a minute off the record?

Mr. Frelinghuysen. I suppose that is possible, if anything is ever off the record, Mrs. Meek.

Mrs. Meek. I just wanted to warn members of the subcommittee that there are certain people in this committee who have niches and some of us are beginning to erode the niches. Some of them are going into global warming. I warn them to stay away from it. They are going into climate control. That is the turf of one member. They have also gone into flip and flap. That is my turf. [Laughter.]

And they are going into that.

Mr. Frelinghuysen. This is good enough to be on the record. [Laughter.]

[Pause.]

Mrs. Meek. Now going to the substantive part of my presentation----

Mr. Frelinghuysen. I thought the other was pretty substantive. [Laughter.]

Mrs. Meek, the floor is yours.

ENVIRONMENTAL JUSTICE

Mrs. Meek. Thank you, Mr. Chairman.

I am very concerned because many people in the civil rights movement and many environmentalists have really accused EPA of not really having aggressive enforcement in minority and low-income communities in terms of your environmental justice action. It seems to me that there are certain disparity impacts that have been looked at and criticized by environmentalists and civil rights groups, particularly the great plans that were made during the 1990s regarding what the Agency would do in terms of environmental justice. And many things were at that time recommended and weren't followed, and, of course, EPA tried their best, I am sure.

It appears to me, Ms. Browner, that there has been quite a bit of inspection but limited enforcement of some of these standards. I come from a community that is in dire need of the kind of thing that environmental justice would bring to them, communities where water pollution, air pollution, and the kinds of things which many times are overlooked, and I have asked so many questions on this subcommittee about the Superfund. I have met with your staff members and got some very good information. But it just doesn't seem to happen.

And I want to ask you now, can you give me some insight as to what is going on in EPA in terms of adding some teeth to your enforcement of environmental justice programs?

Ms. Browner. Well, we have done a number of things to ensure that the very real concerns of minority communities are incorporated into all of our decisionmaking. For example, when we look at setting new pollution standards, we take into account the most at-risk population. While historically, a lot of the work would be done around sort of the average middle-aged white male, now we look at specifically the impacts on communities at risk, which will frequently be minority or tribal communities. We look at impacts on children. We know that if we protect the most at risk, then we are protecting the population at large.

ENVIRONMENTAL JUSTICE: TITLE VI GUIDANCE

Second, we have created an Advisory Committee on Environmental Justice to hold us accountable, and to work with us. Perhaps the most important thing which we are preparing to do and we will have ready in early spring is Title VI guidance. Ann Goode, who has been spearheading this effort, has just done an incredible job. These meetings are difficult. They are intense. There are a lot of emotions on all sides of the issue. But we are preparing to put the guidance out for notice and comment. We do want to hear from people despite all of the stakeholder involvement that Ann Goode has been involved in--guidance to the States on how they can incorporate environmental justice and Title VI of the Civil Rights Act requirements into their decisionmaking, and into their programs.

It is our strong desire and hope--and this will not be achieved in every instance, but I certainly hope we can achieve it in more instances than not--that the needs of these communities are brought in on the front end, that they are not simply left to file a petition, a lawsuit on the back end,

because we never get good answers when we get down to that level.

Those rights exist. We honor those rights. We preserve those rights. But the real solution to this is to engage these communities, to engage their very real concerns, the very real impact in these communities on the front end. That is what this guidance is designed to do, to give States tools because we are not there every day making every single decision. The States make, as you well know, the lion's share of these decisions. If it would be helpful when the guidance is ready to go out for notice and comment, we would be happy to engage in whatever briefing people up here would like to understand what our thinking is. After we receive the notice and comment, we will make whatever appropriate adjustments are necessary and then finalize the guidance.

It has taken us longer than we wanted. I am the first to tell you that. But the emotions and the very real concerns on all sides are tough. It is a very, very difficult thing we are trying to do.

Mrs. Meek. I also think that perhaps Ms. Goode can help my staff and I in terms of how things happen from the local level all the way up to the Federal level, because each one says that it is someone else's responsibility, and it just never gets done in many of these areas. So I would ask Ms. Goode if she will assist my staff in helping us to trace how these things-- how we can make something happen, which we are not able to do right.

We have lead poisoning problems. We have all kinds of problems in that community, and you do have information on local communities. I know that you are doing that kind of data collection, and it will help us tremendously if we will ask Ms. Goode to help us in that regard.

Ms. Browner. Thank you.

HOMESTEAD AIR FORCE BASE: environmental impact statement

Mrs. Meek. I have another question regarding Homestead Air Force Base. No one wants to hear that word, Homestead Air Force Base. It is like that old vaudeville routine: ``Slowly I turn, step by step.'' [Laughter.]

But, anyway, in 1993, BRAC turned this into a joint-use facility. It has been 7 years. We had our environmental impact statement. We had a draft supplemental environment impact statement. And it is about to be concluded.

When it is concluded, the Defense Department will issue a final record of decision recommending how the base should be disposed of. Two competing plans have emerged: the Dade County plan, which would turn the base over to Miami-Dade County and develop it as an airport, and the Collier-Hoover plan, which would provide office, shopping centers, golf, and other forms of development.

Ms. Browner. Right.

Mrs. Meek. Has EPA taken a position? Should EPA take a final position on the final disposition of the base? Will you play any role in the evaluation of comments concerning the SEIS? What role, if any, does EPA play in the base realignment and closure process generally? And what role have you played in

the Homestead scenario?

Ms. Browner. Under the environmental impact statement process, EPA is what is referred to as a commenting agency. We have filed extensive comments. The Air Force, because it is their base, is what is referred to as the lead agency, while, for example, Department of Interior has commented, and we have commented.

In our comments, we raise very real concerns about water quality and how potential development will affect water quality, which is already stressed and strained, as you well know, in South Florida for a number of reasons. We are particularly concerned about an airport and all of the impacts that a large-scale airport that has been proposed or considered would bring to water quality, including in areas like Biscayne National Park.

EVERGLADES RESTORATION

Mrs. Meek. All right. If I have a little more time, Mr. Chairman, I have some more questions. I will quickly run through them.

Another issue I have, Ms. Browner, has to do with Everglades restoration, among the many that I have. I will certainly turn in others or wait until the third round.

I heard you speak in Naples, Florida--incidentally, you speak very well--earlier this year before the Senate Committee on Environment and Public Works. And I know that you support Everglades restoration.

Could you discuss what will be the EPA's role in the implementation phase of the restoration plan? I notice that your budget has \$50 million for a significant new investment to restore water quality in the Great Lakes, which we talk so much about today. Does EPA include funding for this plan in your fiscal year 2001 request, that is, the Everglades restoration? If so, how much and in what accounts?

Ms. Browner. As I know you are well aware, the administration, and the Florida delegation in a bipartisan effort have put forward a restoration plan. It has not yet been authorized by Congress, which would obviously be the first phase. I would hope as a native Floridian, that that is sooner rather than later. After authorization we would then look to the appropriations process.

The role that EPA will play in the long-term restoration of the Everglades is the protector of water quality. Because of the Clean Water Act, our job on behalf of the people of South Florida is water quality. It is fresh, clean water.

We were a key agency in developing the restoration plan, which focuses not just on protecting Everglades National Park but also on cleaning water and making sure there is abundant water available.

We are specifically asking Congress this year, when they reauthorize the existing Everglades projects, which as you well know, some projects have been going on 30, 40, 50, 60 years down there--to change the existing project purpose. The existing project is now beginning to encompass some of the restoration components. We are asking Congress to change that project to include not just water quantity, which it has

historically included, but also water quality. That is a specific request from the Environmental Protection Agency, from me, because if you don't do it, history will continue to repeat itself. We will continue to make water quantity decisions, but we will forget about actually cleaning up the water. The two have to go together.

So we are very interested this year in seeing WRDA amended to include for the existing Everglades project water quantity and quality.

The budget we have before you right now includes approximately \$3 million for our ongoing Everglades activities. Again, once the full restoration is authorized, then the administration would make an appropriations request.

DEEP WELL INJECTION

Mrs. Meek. All right. And what is the status of the rule change that you promised me last year on the deep well injection----

Ms. Browner. We are about to be done.

Mrs. Meek. It is about to be done?

Ms. Browner. Yes, in the spring. We have been working with the county. We have this issue in two counties in Florida, and, Mrs. Meek, I think people are happy. I think we have managed to take care of everyone from the city to the county to the environmentalists.

Mr. Frelinghuysen. It is a question of whether Mrs. Meek is happy.

Mrs. Meek. I want to get it done. [Laughter.]

Ms. Browner. Well, she wanted us to do it more quickly. You know, when we try to make everyone happy, it takes more time. And I wanted to do it more quickly, but I think we are set to go.

Mrs. Meek. Thank you. Thank you, Mr. Chairman.

MTBE REGULATORY AUTHORITY

Mr. Frelinghuysen. Thank you, Ms. Meek.

I just want to follow up on some of our MTBE issues. I somewhat cut you short because we recessed to vote, and I did want to give you, somewhere along the line, equal time. We have talked informally in my return to the room about whether you would like to expand on your response.

Ms. Browner. Let me say this, because I appreciated that informal moment we had.

This is an issue where I think we all know something needs to be done. We will, as quickly as possible, conclude our review of existing authorities in terms of what we can do administratively and make an appropriate announcement.

Just the one caution I have, as you all well know--and we had just had a question and answer about our administrative authorities--they don't happen overnight, and rightfully so--it involves notice and comment, litigation. So anything I can come up with administratively--and we are being more creative than we possibly dreamed of--is going to present a challenge.

Mr. Frelinghuysen. We urge you to do it. I think you have got the message, and thank you.

Mr. Goode, thank you for your patience.

Virginia Copper Lawsuit

Mr. Goode. Thank you.

Ms. Browner, you in your previous testimony stated how under, I believe, the Clean Water Act the EPA would be sued if there was not compliance.

Ms. Browner. We are being sued.

We have TMDL litigation in 37 States.

Mr. Goode. All right.

Ms. Browner. We settled a Virginia one.

Mr. Goode. Well, I know what happened in Henry County, and you all may have been sued down there or it is possible it was settled before suit. But even if you were sued, your bill and the one that goes up, if it is a water plant that needs to upgrade or do something, it is the water customers in Henry County that are going to have to pay the increased fee. You agree with that, don't you?

Ms. Browner. If we have settled a TMDL case----

Mr. Goode. No, this isn't a TMDL.

Ms. Browner. What is it? I apologize. I am not----

Mr. Goode. This was about copper in the water.

Ms. Browner. I apologize. Was EPA sued or was the State sued?

Mr. Goode. It could have been the State.

Ms. Browner. Okay. We are happy to take a look at the case. Unfortunately, we have a lot of litigation. I don't know this one.

Mr. Goode. I know. But even if you are sued, my point is the one that has to pay the bill for the suit isn't the EPA. Am I not correct on that? If you have to tell a locality or a State you have got to upgrade your water plant or you are going to have to take these actions on the river, they are the ones that have got to cough up the money to do whatever is necessary.

Ms. Browner. In the----

Mr. Goode. Generally speaking.

TMDL litigation

Ms. Browner. Well, there is not a general answer. It will vary from statute to statute. An example I can give you is in the TMDL litigation. I mentioned earlier a Florida litigation that I am familiar with on Lake Okeechobee. We are actually doing the work there to set the standard. We are doing the work. The State chose not to. They are working with us, but they chose after the settlement not to take the lead. So we are actually doing it, and we foot the bill when that happens.

Now, once the standards, the loads are put in place, our great hope is that the State of Florida is going to take back the day-to-day responsibility of it. As I said previously---

Mr. Goode. In that one you are talking about now when you said EPA, is it coming out of EPA's budget?

Ms. Browner. Yes. In terms of the actual scientific work that we are doing, yes, we are paying for that. But I was going to get to your point, which is, you are correct, that once a

plan is developed in terms of the work of reducing the pollution, there will be, if it is done through best management practices but there may be requirements beyond that.

Mr. Goode. And that is when the States and the localities or private people have to cough up the money.

Ms. Browner. As is commonly true with other pollution sources, there can be a cost of reducing pollution to a private source. That is true.

TMDL COSTS

Mr. Goode. On TMDLs, how much do you have in this budget request for EPA's costs associated with TMDLs?

Ms. Browner. Well, again, the way the statute is envisioned, it is actually work that is done at the State level. We are requesting an increase of \$45 million in our Section 106 grants. That is money that will go to the States. That is on a base of \$115.5 million, so it is almost a 30 percent increase for the TMDL Section 106 State grants program.

We are also requesting an increase in non-point-source grants. Non-point-source grants, while not directly a piece of TMDLs, can frequently get you the kind of load reductions. There we are requesting a 25 percent increase, again, in money that goes to the State.

Mr. Goode. Are there any lawsuits on specific streams in Virginia and Southside, Virginia?

Ms. Browner. Mr. Chairman, this might be helpful to the whole committee. We will give you a list of all of the litigation. We don't like the position we are in. I don't like the position we are in, and it is an odd position because the allegation is that the States didn't do what they were supposed to do under the Clean Water Act, but the Federal cause of action rests against us. It is a very complicated position we have been put in, which is why we have this proposal to try and get everyone beyond the 37-plus litigations that we are involved in.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Goode. Are the plaintiffs in a lot of those litigation, are they residents of the area or residents along the streams, or are they environmental groups? Because I know----

Ms. Browner. They are probably both.

Mr. Goode. There were the environmental groups up here that came down to Henry County and wanted a high--they wanted less copper in the water than what was naturally in the water, and they wanted the Henry County residents to pay the water bill to jack it up so that it would be reduced. They eventually won, but it cost Henry County--and it was--they said--the State said that is the Federal standard on copper in the water. And it didn't hurt humans. It only hurt potentially some plant life in the stream. And if it came down between the plant life and the jacked-up water bills, most of the residents would rather have not paid the jacked-up water bills.

Ms. Browner. Again, I am not familiar with that specific case. I am happy to take a look at it. We will provide to the subcommittee for the record a list of all the TMDL litigations, and we will specifically----

Mr. Goode. This isn't TMDL.

Ms. Browner. I know. But we will also give you the TMDL litigations in Virginia.

We have an MOU with Virginia, and we are trying to do this with other States to establish a memorandum of understanding on how the State might manage TMDLs. If we can get those, then we go back to the court, and then at least whatever consent decree the judge imposes on all of us, it is with the work of the State. That is the best possible scenario. Not every State is willing to do that, and that presents a host of challenges.

Mr. Goode. I thought under the Clean Water Act the theory was that the State had primacy rather than the EPA. Do you disagree with that?

TMDL STATE FRAMEWORKS

Ms. Browner. Where the States have developed a program and we have approved the program, they have primacy for water quality standards. I don't disagree. And for TMDLs, they do. But when Congress wrote the statute, they didn't say sue the State for not doing the job. They said if the State doesn't do the job, then you can sue EPA to force EPA to do the job. That is why we are trying to get a rule in place, a framework, for the States so that we get out of this completely crazy situation of litigation river by river.

Mr. Goode. And you are going to let the State set the standard river by river.

Ms. Browner. Right. They would do the work on determining the excess load, and how much pollution needs to be reduced. That is step one. Step two is to write the plan for achieving those reductions.

Now, obviously, we have to review those----

Mr. Goode. Suppose the State looked at it and said I don't think it needs any reduction, I think it is fine just like it is, all the users along the river are happy, all the adjacent landowners are happy?

Ms. Browner. They could make that decision. But the State has set water quality standards--that go back several years. The first real step in the process is the State set water quality standards. Let me just use phosphorus because it is an easy example. I don't know if Virginia has a phosphorus standard--I am sure they do. So Virginia sets a phosphorus standard. They say how much phosphorus is their water quality standard for the State. That----

Mr. Goode. But you have to approve that phosphorus standard.

Ms. Browner. Yes. Generally what has happened is we set national standards as a backstop, and then the States work against those. If a State fails to set a water quality standard that they are required to set, then the Federal standard prevails in writing permits.

The reason you want a water quality standard is so that industry can get their permits. The permit has to have

standards in it.

Now, I don't happen to know how far along Virginia is in doing their water quality standards.

States have a variety of views about this. Some have been very aggressive in getting out there and doing the work and others haven't. But apparently, Virginia has been doing it.

The standards have to be scientifically justified. They can't just set any standard. But once the standard is set, then you look at the water----

Mr. Goode. But the scientific justification, I go back to the copper standard----

Ms. Browner. That is drinking water.

Mr. Goode [continuing]. Was not what was good for humans, it was what was good for some kind of plant life in the stream.

Ms. Browner. Again I do not know what litigation you are talking about, but the Clean Water Act is very specific. Congress was very specific, and every time they revisited the Clean Water Act, they have maintained that the goal of the Clean Water Act, the commitment is fishable and swimmable. So it is not simply human health, it is also environmental health. It is both.

Mr. Goode. Fishable and swimmable, I guess the reason it was not fishable was there was some fish there that could not eat a fern, even though it had plenty of other stuff to eat. That is what you are saying, is it not?

Ms. Browner. Sir, I have said four times now, and I am going to say it one more time, I do not know what this litigation is. If you want me to comment on it specifically I will read it.

Mr. Goode. I am not talking about this specific litigation. I am talking about the general thing. Your standard of fishable and swimmable----

Ms. Browner. It is not our standard, it is Congress' standard.

Mr. Goode. All right. But you picked--Congress does not pick the level of copper in the Smith River. Am I not right on that? You did.

Ms. Browner. Any standard that we set under the Drinking Water Act or under the Clean Water Act, we are required to set based on best-available science and through notice and comment. We do not do this in the dark of night--people comment and there is lots of activity. If they do not like it, they sue us. So it is not as if this is something that people are not a part of, in your State or otherwise. They are a large part of it.

Mr. Goode. But I can guarantee you none of the right people at the wallet company down there ever had any idea of what was going to blindside them on the copper standard.

But let me go to something else you said. On the utilities that were grandfathered, you said if they changed the oil, they could change oil, but they couldn't change the engine; isn't that right?

Ms. Browner. That was a----

Mr. Goode. That is your analogy.

Ms. Browner. Uh-huh.

Mr. Goode. What about if they change the transmission?

[Laughter.]

Ms. Browner. I do not know enough about cars. [Laughter.]

Mr. Frelinghuysen. Relative to cars, Madam Administrator, do not keep your car engine running because you may be here a little longer than we had originally anticipated.

Mr. Goode, if you could wrap up, we are going to go to Mr. Mollohan.

Mr. Goode. Thank you.

Mr. Frelinghuysen. Thank you

Ms. Browner. If you change your transmission, do you get different emissions levels?

Mr. Frelinghuysen. Mr. Mollohan?

Ms. Browner. I just want it to start in the morning.

NOX SIP CALL AND SECTION 126 PETITIONS

Mr. Mollohan. Thank you, Mr. Chairman.

Madam Administrator, I would like to revisit an issue that we talked about a little bit last year, and that is the NOx SIP call and the Northeast Section 126 petitions, and how those are playing out. And just to recap a little bit, we will remember that the D.C. Federal Court ruled some time ago that EPA had exceeded its authority in moving forward with the NOx SIP call---

Ms. Browner. No, no. With all due respect, they put a stay on the NOx SIP call while we all argued whether or not it was appropriate. They have recently ruled in our favor.

Mr. Mollohan. I am going to get to that.

Ms. Browner. Okay. I am sorry. It was a stay. They did not say we exceeded our authority.

Mr. Mollohan. It was a stay on your moving forward with the NOx SIP call.

Ms. Browner. Yes, exactly. Correct, on the SIP call. That is correct.

Mr. Mollohan. But just to put a point on it, what was the basis of the stay?

Ms. Browner. To allow for consideration of both sides' arguments: our argument on why we should move forward and the industry argument on why we should not, or the States, I think, joined with some of the industry.

Mr. Mollohan. Okay.

Ms. Browner. We did have another ozone case, where the issue you are raising---

Mr. Mollohan. No. I understand. So the Federal Court put a stay on your issuing the NOx SIP call.

Ms. Browner. On moving forward, right.

Mr. Mollohan. And then in some time frame, some of the Northeastern States moved forward with the Section 126 petition.

Ms. Browner. I think they may have actually been pending at the time.

Mr. Mollohan. A series of petitions----

Ms. Browner. Right.

Mr. Mollohan. And after the stay, you granted several of the petitions, and those petitions asked you to pinpoint sources.

Ms. Browner. Yes. I think some of them we granted before the stay and some of them after.

Mr. Mollohan. That is interesting, but I'm not sure . . .

it is material to my question.

Ms. Browner. Okay.

Mr. Mollohan. But fine. You granted several of those petitions.

Ms. Browner. Yes.

Mr. Mollohan. Which, having granted them, you subsequently moved with a suit against some of these States or some of these utilities, specific utilities.

Ms. Browner. No. We have taken no action under Section 126, other than to grant the petitions. We have not completed our review of all of them, but we have taken no action pursuant to 126. We have taken enforcement actions, and it may be that there are crossovers in the list of utilities, but we have taken no site-specific, facility-specific action under 126.

Mr. Mollohan. Maybe we are just confusing two issues here. I mean, you are drawing very fine lines, and that is fine--but you are suggesting that EPA did not file lawsuits against seven Midwestern and Southern utilities alleging that the utilities----

Ms. Browner. Not under Section 126 of the enforcement cases.

Mr. Mollohan. Excuse me.

Ms. Browner. I am sorry.

Mr. Mollohan [continuing]. Leading to these utilities or alleging violations of the Clean Air Act by modification of their plants without getting proper permits?

Ms. Browner. We have not filed under the 126 petitions any action against an individual utility----

Mr. Mollohan. Not----

Ms. Browner. Right.

Mr. Mollohan. Okay. Go ahead.

UTILITIES LAWSUITS

Ms. Browner. Separate from 126, we have filed a series of enforcement actions against utilities.

Mr. Mollohan. Well, if there is a relationship between the 126 petitions and the requests by the petitioners that you cite specific sources and that you go after specific sources for reductions----

Ms. Browner. There is no relationship.

Mr. Mollohan. So your filing of suits against the specific utilities, has no legal or policy relationship?

Ms. Browner. There is neither. They are filed under separate authorities.

Mr. Mollohan. That does not necessarily suggest that there is no relationship. There is some relationship; the 126 petitions are petitioning EPA to go after individual sources, are they not?

Ms. Browner. Some States chose to name specific facilities in their 126 petitions, some States chose not to. That is correct.

Mr. Mollohan. And your suit against the Midwest and Southern utilities were specific against those utilities, were they not?

Ms. Browner. The cases that we have filed against individual utilities are an enforcement action and the result of an enforcement that has been underway for several years.

Mr. Mollohan. Getting back to the gentle lady's questions from Kentucky, on the basis that these were not grandfathered modifications, but they were----

Ms. Browner. Correct.

Mr. Mollohan. And so that is a legal issue that has to be determined.

Ms. Browner. Right.

Mr. Mollohan. But what I assumed, and what you are suggesting is not a correct assumption, is that there was a relationship, either legal or policy relationship, between the 126 petitions and the suits.

Ms. Browner. They are two separate actions.

Mr. Mollohan. Let me finesse that and go beyond.

[Laughter.]

Most recently, a three-judge panel has----

Ms. Browner. We won.

Mr. Mollohan. Yes, you won. And since you did win, you are able to move forward with the NOX----

Ms. Browner. SIP call.

Mr. Mollohan. Frank says so far. [Laughter.]

With the NOX SIP--and he wishes you well.

[Laughter.]

With the NOX SIP, you can move forward with that.

Ms. Browner. Correct.

Mr. Mollohan. So my question is you have got two, arguably, enforcement actions going forward addressing Midwestern sources and the allegation of long-distance transport of NOX from the Midwest to the Northeast. And so I am, exploring your attitude and how you are going to move forward in this area. Will you pursue action in response to the 126 petitions or will you move forward with the NOX SIP and allow the States more flexibility; and then, how do these independent suits out there against the seven utilities play in all of this, if you will?

NOX SIP AND 126 PETITIONS LINKAGE

Ms. Browner. You have got it. There are three pieces.

You might remember when we originally were sued by the Northeast States, the 126 petitions were filed, we said that the best way to meet their needs, to answer the 126 petitions, was through the NOX SIP call. We were essentially going to leave the 126 petitions there. But we had answered their air pollution concerns with the NOX SIP call, and that was a smarter way to do it.

Then when the NOX SIP call got stayed, we had a problem because we no longer had an answer to the 126 petition. So we had to move forward to answer them, which we did.

Mr. Mollohan. How did you do that?

Ms. Browner. Each one has to be answered, depending on how the State filed the claim under the 126 petition. But we essentially granted them. We said, ``You are right. You are entitled to these reductions pursuant to the 126 process.''

Mr. Mollohan. And specific sources you agreed with?

Ms. Browner. No. What we said was, some States came in on specific sources and some States did not. What we said in

granting them was you are entitled to this amount of reduction. How it is actually achieved may or may not be the sources you name. It would be up to the State that you listed to figure out how to get there.

Mr. Mollohan. Well, that would be in the spirit of the SIP calls, I guess.

Ms. Browner. Exactly. That is what we were trying to do, although we had this stay, and obviously we had to honor the stay. Now that the stay has been lifted, we are analyzing how to regroup and go back to what I think everyone thought--whatever your opinion may have been on the levels--was the reasonable way to deal with the 126 petitions and the NOX SIP call, to try and weave them back together. We are trying to figure that out right now. We only got the Court's ruling in the last three weeks. So we are trying to figure that out right now.

We continue to believe that the best solution is to go, not on a necessarily facility-by-facility basis, but to give individual States the ability to write a plan, and we are trying to figure that out.

Mr. Mollohan. That would be to move forward with the NOX SIP calls.

Ms. Browner. Yes, which we can now do.

Mr. Mollohan. So that is your inclination at this point--to try to move in that direction?

Ms. Browner. I think the challenge we have right now is that the 126 petitions give certain specific rights, in terms of time frames, and how can we incorporate that back into the NOx SIP call, and it is just a challenge we are trying to work out. And we would be happy to talk to people when we have been able to think this one through some more. That is our inclination. How we get there is hard.

Mr. Mollohan. I would just encourage you to sort through that. Instead of having something these two actions coming at the States, it would be nice to have something far more clear-cut. And you are suggesting that the suits against the utilities----

Ms. Browner. Is a third piece.

Mr. Mollohan. Are totally independent of this whole process.

Ms. Browner. Right. But let me say this----

Mr. Mollohan. But it is really not totally independent.

Ms. Browner. Well, it may well be that some of the----

Mr. Mollohan. At least it has impacted the suits.

Ms. Browner. Here is how it can work out. Some of the enforcement actions, which we file under a separate authority, are in facilities or at facilities that were named in the 126 petitions. Many of them were not, but some of them, there is some overlap.

We have already settled one, and we have settlement discussions underway with others. If we settle with a specific company for a specific set of facilities, and they agree to a certain amount of reductions, the State, in writing their plan, can take into account those reductions. They can get credit for those reductions.

Mr. Mollohan. Yes, and they can bank that, I suppose.

Ms. Browner. Well, no, they do not even have to bank them.

They have got them.

Mr. Mollohan. Well, that is what I mean. They can credit them.

Ms. Browner. Exactly. Right. But it is an independent action outside of the NOX SIP call and the 126. You are exactly right, the 126 and NOX are appropriately linked.

Mr. Mollohan. I guess the question from people who are being regulated is are you going to move forward with both actions or are you going to---

Ms. Browner. You know where we were originally. We are trying to see if we can get ourselves back over there. But obviously time frames have gotten messed up pretty significantly.

Mr. Mollohan. Thank you, Mr. Chairman.

Thank you, Madam Administrator, for your testimony.

Mr. Frelinghuysen. Thank you, Mr. Mollohan.

Mr. Dickey?

Mr. Dickey. Thank you, Mr. Chairman.

Mr. Frelinghuysen. And then he will be followed by Mr. Knollenberg.

TMDL PROPOSAL

Mr. Dickey. Thank you to the committee, Mr. Chairman, Mr. Knollenberg, for letting me ask my questions at this time. And I want to thank you, Administrator Browner, for your past courtesies and being willing to listen as my constituents have come to you in the past and solved problems, and I hope, as you can see, for everybody's benefit.

That is about the last of the courtesies that I want to show. I want to tell you that the TMDL is so serious I am worried I am not going to be able to get the right questions out. It is such a critical thing for me to hear from you and for my constituents to hear from you, as well as constituents all over the United States. I do not know if you know how serious it is, what a drastic, drastic, traumatic experience it is for mom-and-pop operations in timber, poultry and cattle.

I have seen it, in that I have spoken to four different groups: one in El Dorado, Arkansas, where there were 1,100 people; one in Texarkana, where there were 3,000; West Monroe, Louisiana, where there 2,200; and then in Fayetteville, Arkansas, where there were 3,100 people. They have sat quietly and listened, but have been so intent that I am just that concerned. And so I also am on borrowed time here, and so I may interrupt you if you are filibustering me in any way, which I have not seen that you have been doing.

Here is the base, the foundation complaints that we had, and it is more or less, it might be even considered legal talk: We think that the TMDL proposal, as it is, changing what we have considered to be nonpoint source pollution to point source solution is a taking of property, of property value without compensation; it is violating the separation of powers; and it is legislation by regulation; and it is an unfunded mandate, as prohibited by statute from the United States Congress.

What I would like to ask you first of all is do you understand the drastic nature of what you are doing at this

time and what effect it is going to have on individuals all across the United States?

Ms. Browner. First of all, we do not believe we are exceeding any of our authorities, but I am sure you know that is what we think.

Secondly, I am keenly aware that there is a huge amount of confusion out there, and have personally been meeting with members and others. Mr. Fox, who has been in any number of meetings, will be joining you this afternoon in another meeting, to try and better explain what we are about.

Mr. Dickey. When you say ``confusion,'' could you better say objections? There have been over 30,000 letters----

Ms. Browner. Well, with all due respect, and I have not seen all 30,000 letters, but I have certainly seen enough of them to understand the tone. The premise of many of the ones I have seen is wrong. I do not know if you were here at the beginning when we first talked about TMDLs, but we are abundantly clear about the fact that the Clean Water Act does not give us any authority to require a permit, a Federal permit, for nonpoint source.

Mr. Dickey. But that is not the whole story.

Ms. Browner. I know, but, sir, with all due respect, a lot of the letters we get say that is what we are doing. But we do not even have the legal authority, and I think that is a confusion.

Mr. Dickey. Well, all you are doing is reclassifying nonpoint source and calling it point source, and so you have a technical response that you can do that. But it is still--do you understand, people out there do not deal in all of these sophisticated terms.

Ms. Browner. Right. I agree.

Mr. Dickey. What they hear is what we have been allowed to do for years, and years, and years, and decades, and decades, and decades, because of some people up here in Washington who have never set foot on the ground that they take care of it, and they depend on, and have never seen the water that they protect so that their children and their grandchildren will, in fact, drink clean water, have made a decision that is going to put them out of business.

Ms. Browner. We have not made any final decision.

Mr. Dickey. Well, we have heard that before.

Ms. Browner. It is true.

Mr. Dickey. I know.

Ms. Browner. It is a proposal.

TMDL COURT ACTIONS

Mr. Dickey. But I have heard it in other things, yes. I have heard that. And you are also going to say that there is a court action that you have to go by; is that right?

Ms. Browner. There is more than one.

Mr. Dickey. Yes. But you are agreeing with those court actions. In fact, those associations----

Ms. Browner. What would we----

Mr. Dickey. What I am saying is----

Ms. Browner. If a judge enters an order, I do not have a choice. I cannot ignore it.

Mr. Dickey. Is it a consent decree? Is it a consent order? Have you all agreed to it? Have you settled those cases?

Ms. Browner. We try our best to settle them because we get better terms and conditions than when the judges decide. Judges do not want to wait seven years.

Mr. Dickey. According to your benefits. But is it representative of the people who are out there, who are not being represented, when you agree to these consent orders, and you say, ``We are going to use these court orders as a hammer. We are going to hide under these court orders, and by doing that, we are going to agree with them, and get the force of a court order to help us drive this issue home, and destroy these industries.''

Ms. Browner. You can believe, if you want to, that I like being sued. But let me tell you something, I hate it.

Mr. Dickey. Well, but you are manipulating it now.

Ms. Browner. No, I am not.

Mr. Dickey. You are too.

Ms. Browner. How am I manipulating it? Do you think I call someone and ask them to sue us?

Mr. Dickey. You know George Frampton?

Ms. Browner. I do not ask to be sued.

Mr. Dickey. Have you ever heard of George Frampton?

Ms. Browner. Of course I know George Frampton.

Mr. Dickey. We had the same issue with the U.S. Fish and Wildlife, and we found out that the court action that he kept talking about, he was both the plaintiff and the defendant, and he agreed with himself, he agreed with himself as to the deal.

Ms. Browner. Fortunately, I am only the defendant in these.

Mr. Dickey. When are these people going to be represented in those court actions?

Ms. Browner. We go to the State in every instance, and we beg the State. I did not write the Clean Water Act 30 years ago when it said EPA would be sued. I hate these lawsuits. That is why I am trying to put a program in place to get us outside of them. That is all I am trying to do.

Mr. Dickey. Excuse me for interrupting. But let us just say this: That we could do something about the lawsuits. We could contest them, you could go and you could give a period for response from the people and say, ``What do you all want done?'' We could get a contested, litigated issue rather than a home-cooked type of decree or we could go to Congress, couldn't we, and ask for a change in the law and a clarification. Have you ever thought of doing that on behalf of these poor people who are being oppressed by your regulation or your proposed regulation? Have you ever thought about doing that?

Ms. Browner. I do not believe you need to change the Clean Water Act.

Mr. Dickey. You are doing it. All you have to do, of course, we have to reauthorize it, do we not, somewhere?

Ms. Browner. Congress was. You were supposed to reauthorize it I think ten years ago.

Mr. Dickey. I am just saying we can do that. But now have you ever thought about coming to Congress, unless you have an agenda, which I may say, respectfully, is a political agenda, unless you have an agenda, then you could come to Congress and say, ``We have heard these 30,000 in this limited period of

time, open discussion, where we have cut off the public comment period, we have cut it off, even though begged by members of Congress to extend it--''

Ms. Browner. We did extend it.

Mr. Dickey. We extended it once, but you did not take Chairman Shuster's request, did you, at the last to extend it again because the outpouring was so great.

Now, what I am saying is you could take that and extend it more and get more of a feel from the people who, in fact, are being harmed by this. But does that matter? Does it matter that there are people who are being destroyed, their motivation, their livelihoods, their ability to earn their own way in the world, and you are destroying it? Does that matter?

Ms. Browner. We do not----

Mr. Dickey. Does it matter?

Ms. Browner. We are not going to put anybody out of business. There is no rule in place yet.

We have fought some of these cases, and the agreements we have reached are far better, in terms of flexibility for the States, than where the judge has ordered a remedy.

Mr. Dickey. From your viewpoint.

Ms. Browner. No, sir, not just our viewpoint. Look at the time frames. In the cases we contest, we get shorter time frames than in the cases we settle.

Mr. Dickey. Let us change the course a little of this discussion. Is it better for the States when----

Ms. Browner. More time, yes.

TMDL COSTS

Mr. Dickey. When you put on them the requirement and the responsibility to not only investigate, but permit and then enforce--now, let me give you a figure. My little old State of Arkansas, we have 192 stream segments. We have concluded that about \$50,000 will have to be spent for each segment, which is something like \$9.6 million. Louisiana has an \$85 million bill looking at it. That is an unfunded mandate. We are getting close to the \$100 million just in two States. Have you all considered what the impact is going to be on the States and where they are going to get the money?

Ms. Browner. Part of our cost analysis did look at--and I answered this before, and I want to be very clear about it--the cost to the State agencies to run a program. And we looked at that, and we did a cost analysis. We made it public, and we took comment on it.

The second issue is the cost of meeting state requirements. This is something that is very hard to answer because until the States develop their individual programs, how you actually meet the State requirements is an unknown. Different States will make different decisions. Many States, we believe, will be able to address a lot of these pollution reductions through ongoing best-management practices.

Mr. Dickey. That is all of the questions I have this round. Thank you.

Mr. Frelinghuysen. Thank you very much, Mr. Dickey.

Mr. Knollenberg?

NOX SIP Call and Section 126 Linkage

Mr. Knollenberg. Thank you, Mr. Chairman.

And, Ms. Browner, I think I heard some good news when you said that you, in responding to the gentleman from West Virginia, the ranking member, that you definitely see NOX and Section 126 linked.

Ms. Browner. What I said is we had them linked. We got sued. That forced us to unlink them. We are looking at, having now won the court case on the SIP call, how we might relink them. It has been complicated by the litigation.

Mr. Knollenberg. I am glad to hear that. I know that this is a complex issue. There is report language, you very well know, in last year's conference report which does speak to the linkage.

Ms. Browner. We did maintain the linkage, and then we got sued.

Ozone: 1 Hour and 8 Hour Standards

Mr. Knollenberg. I just wanted to clarify that.

Let me go on to a couple of quick questions. On the 8-hour ozone standard, has that come up, by the way, in previous----

Ms. Browner. No, it has not yet come up.

Mr. Knollenberg. In an attempt, of course, to smooth the transition from the old 1-hour National Ambient Air Quality Standard--I know you are very familiar with this, the NAAQS--for ozone to the new 8-hour standard, EPA revoked the 1-hour standard everywhere in Michigan.

Ms. Browner. We revoked it everywhere.

Mr. Knollenberg. Everywhere in Michigan. And as you know--
--

Ms. Browner. No good deed goes unturned.

Mr. Knollenberg [continuing]. We have a Michigan problem on this matter.

Ms. Browner. Right.

Mr. Knollenberg. But it appears as though, since the courts have remanded the 8-hour standard, your Agency has proposed reinstating the 1-hour standard.

Ms. Browner. Right. Because we have no standard in effect.

Mr. Knollenberg. However, you are ignoring the most recent air quality data, and instead of relying on attainment designations that were in place at the time the 1-hour standard was revoked, that makes it tough. There is something like five or six counties where EPA has proposed rulemaking that would result, and I will mention them: Bay, Allegan, Muskegon, Saginaw, Midland and Genessee, from being designated, rather, as nonattainment for ozone, despite monitoring data that shows they meet the 1-hour standard.

And last week members of the Michigan delegation met with EPA officials, including Bob Perciasepe, who is the assistant administrator, in order to express their concerns about this particular approach of EPA.

Are you familiar, and this is really a question----

Ms. Browner. Oh, I am keenly familiar with this.

Mr. Knollenberg. Are you familiar with legal principle of

detrimental reliance?

Ms. Browner. Well----

Mr. Knollenberg. See, communities----

Ms. Browner. I do not think it appears in the Clean Air Act.

Mr. Knollenberg. It probably does not. But here is the problem: Communities in Michigan relied upon EPA's word in ceasing to pursue their attainment petitions. Now, these same communities would be penalized for relying upon EPA's assertions, when, in fact, they are currently under compliance.

Ms. Browner. Yes.

Mr. Knollenberg. And does that not, again, violate this big legal term ``detrimental reliance''? Here is the question, maybe in more general terms---

Ms. Browner. We are trying to solve this. We want nothing better than to get this solved. We thought we had done everyone a big favor. What happened is you had all of these places who had had 1-hour problems. They had finally met the 1-hour standard. But under the Clean Air Act, they were required to give us a maintenance plan. So they met the standard, their statistics are good, but they still owed us a plan, under the law.

Well, trying to be really nice, we said do not worry about the plan because there is a new standard. We will just work with you to incorporate whatever might have been in your maintenance plan into whatever you may need to do for the new standard. You will build on it. It is like building a brick wall.

When the 8-hour standard got remanded, we were left with the fact that there is no standard in place. So, for example, a lot of other things we are doing for cleaner air, like Tier II, where we worked in cooperation with the car and the fuel industry for cleaner cars and cleaner fuels, we need to show that those requirements are helpful in meeting a standard. So we had to put in place a standard, albeit not the one we think is appropriate.

Mr. Knollenberg. You do not think it is appropriate then.

Ozone Standard

Ms. Browner. We think the 8-hour standard is appropriate. We think that is what the science says.

Mr. Knollenberg. Well, how do we get there?

Ms. Browner. We need a different standard. But bear with me for a moment.

So now we are in this odd moment of putting in place an air pollution ozone air standard, which I think people generally agree we should have. There may be disagreement on what it should be, but we should have one. That means there are a number of these areas that fall into this awkward place where they owed us something under the 1-hour standard, which we were willing to forgo because there was now an 8-hour standard. What do we do with what they owed us under the 1-hour standard?

Here is what we are trying to do. We actually have this issue going on right now on another air pollution issue out in Idaho, and we think we are very close to having it worked out. Our strong hope is that we would propose, as we have done, the

reinstatement of the 1-hour, because we need it for a lot of legal reasons. Then we would allow enough time from proposal to final to work with these places to get their maintenance plans done. So that on the same day that we make final the 1-hour, they do not move back into nonattainment because we have certified their maintenance plan.

So that is what we are trying to do. And as I understand it, for many of your areas in Michigan, they may not like it, but they understand that the time frames are working out. I think we have one or two cities where we are still having a problem. They are just so far behind----

Mr. Knollenberg. You understand those cities relied upon EPA to give them the proper advice, and now they are finding, ``Well, we did what you told us, and now you are crucifying us.''

Ms. Browner. We are not crucifying anybody.

Mr. Knollenberg. Something a little less than that.

Ms. Browner. Sir, with all due respect, we are trying not to designate them. We are doing everything to not do it.

Mr. Knollenberg. If you will give me your word that you are trying to bring this to closure in a satisfactory way, that is what I am after.

Ms. Browner. You have my word.

Mr. Knollenberg. I hear you say that that is what you are going to do.

Ms. Browner. I want to be very clear with you. I think there is one city in Michigan--I know there is one somewhere else--that did less work----

See, the other cities were doing the work when we said, ``Do not worry, do not do it.''

Mr. Knollenberg. Are you saying there is a bad apple in the mix?

Ms. Browner. No. They just were on a different schedule. The question is how to get them onto the schedule that allows us to do this simultaneous move. We have talked to them about what we can do to help them.

Look, we would prefer not to be in this position. We would prefer to focus our efforts, the cities' efforts, and industries' efforts on what we think is the right standard, not on this. But that is not what the Court allowed us to do.

I was just going to give you the name of the city where we have a particular----

Mr. Knollenberg. Do you know what the next step will be in this process?

Ms. Browner. I know we are talking to the individual cities to see what we need to do to help them with the time frames. We can get you more specifics on it.

We are really working to see if we can have everything happen at the same moment so you will not have this temporary issue of redesignation.

Environmental Justice: Interim Guidance

Mr. Knollenberg. And while we are looking for the next step, let me just jump very quickly into something and close out. I think my time is coming to an end here.

What is the next step on environmental justice, in terms of

the interim guidance? We have been waiting, and waiting and waiting----

Ms. Browner. We talked a lot about this before, but I will briefly recap.

Mr. Knollenberg. Do not do anything that you have already done.

Ms. Browner. That is okay.

Mr. Knollenberg. But I was just going to say it has been two years, and there have been several delays, so----

Ms. Browner. Spring. We are going to put the guidance out for notice and comment this spring.

Mr. Knollenberg. What are the processes going to be then?

Ms. Browner. First of all, there has already been an unprecedented amount of stakeholder input. In fact, I was very pleased. I met recently with the State directors who complimented Ann Goode, who has been spearheading this for us on her outreach. But even with all of that outreach and stakeholder involvement, we are going to go to a public notice and comment in the Federal Register. Then we will take the comments, we will review them, and we will make any appropriate adjustments.

Mr. Knollenberg. Do you think you will have one guidance or two? Before there was a couple, and it got to be confusing. You had internal and external.

Ms. Browner. There are two different issues: One is for States, as they manage their programs, to try and incorporate environmental justice issues on the front end to avoid petitions on the back end. That is one.

The second is, when we receive a petition--if we end up there, which we hope we do not--how do we manage that petition. So there are two separate issues. One is for State programs and State agencies and our recommendations to them on how they might avoid petitions, and the other is what do we do when we get a petition.

Mr. Knollenberg. But they should be structured in a way that does not make it difficult for people to understand how they comply.

Ms. Browner. Again, this is guidance. It is not a rule. It is simply our advice to States on how they could manage their programs to avoid getting a civil rights petition filed with us.

Mr. Knollenberg. That concludes my time and my opportunity. But, Ms. Browner, we appreciate your coming before the committee.

New York/New Jersey Dredging: Mud Dumping Site

Mr. Frelinghuysen. Thank you, Mr. Knollenberg.

If we could move for a minute, Madam Administrator, from the Michigan to the New York-New Jersey metropolitan area.

The White House in 1997 closed what was called the mud dump, ocean disposal site for dredged material, and redesignated it with a new acronym called HARS, Historic Area Remediation Site. But many of us refer to it as the mud dump. More importantly, the purpose was to cover approximately 15 acres of contaminated sediments, much of it disposed before a lot of our environmental laws were written that had to do with

protecting the ocean.

Is the capping of the HARS still an important environmental objective of the Agency?

Ms. Browner. Certainly. Absolutely.

Mr. Frelinghuysen. The 1996 agreement, in which the establishment of the HARS was first proclaimed was outlined in a July 1996 letter that you and the Secretaries of the Army and Transportation signed. In fact, I am in receipt of a letter that you and others sent to Congressman Frank Pallone on the agreement. This is a more recent letter.

Since that time, has the administration adhered to the letter and spirit of the agreement?

Ms. Browner. Absolutely. Yes.

MUD DUMP SITE: DISPOSAL CRITERIA

Mr. Frelinghuysen. I have heard persons, including a number of my congressional colleagues on both sides of the aisle, that this is an issue that affects all of us, that the administration has somehow reneged on the agreement by not issuing new criteria for determining what sediments qualify for the HARS disposal. Did the 1996 agreement or the July 1996 letter include a promise to that effect or is the EPA considering new criteria as part of some other process in the New York and New Jersey metropolitan region?

Ms. Browner. I do not have the letter in front of me, so--
--

Mr. Frelinghuysen. This is the issue of criteria because--
--

Ms. Browner. We are proposing criteria guidelines probably this spring.

Mr. Frelinghuysen. Well, the agreement was signed with certain criteria. This is the point here. And some new guidelines are about to be issued. So you are in the process of making revisions to the criteria that are used in deciding whether sediments are sufficiently clean to cover the contaminated area of the ocean site?

Ms. Browner. Correct.

Mr. Frelinghuysen. Can you assure me and my colleagues in our area that good science will be the primary consideration making those decisions?

Ms. Browner. Right. I think the letter made reference to a peer-review process, which we have been engaged in. We are going out for public comment on the criteria.

Mr. Frelinghuysen. So there will be opportunity for the public to comment?

Ms. Browner. Correct.

Mr. Frelinghuysen. And the time line?

Ms. Browner. We hope to have them out this spring. We hope to begin the public comment this spring.

Mr. Frelinghuysen. Well, I understand that even though revising the category for the Category 1 dredged materials was not part of the so-called Gore Agreement when the Vice President visited, EPA has chosen to revise their criteria as part of the CCMP for the New York-New Jersey Harbor Estuary Program. The CCMP, which was finalized in March 1996, contained close to a

thousand recommendations for the management of the estuary. What is the Agency's track record for completing these many recommendations?

Ms. Browner. That is the peer review process we have been involved in right now. That is what we are getting set to put out for public comment--the product of all of our work in this area.

Mr. Frelinghuysen. Why do you have the urgency in addressing this one recommendation, when the material that is currently being placed at the HARS for remediation is already meeting the toughest ocean disposal standards available?

Ms. Browner. Part of what we always promised in addressing this was that, in addition to whatever the national criteria are, that you would have to make site-specific determinations and that we would look at this specific site, the HARS site or the Mud Dump site, and make sure that all of the site-specific determinations were appropriate. That is what we are completing.

Mr. Frelinghuysen. As Congressman Bob Menendez and some of us, when we talked with Jeanne Fox, your regional administrator, lately, like last week, have a concern about the fact that the criteria is sort of a moving target. We go and move ahead based on one set of criteria and then all of a sudden somebody is in the process of developing some other materials, some other criteria.

Ms. Browner. I think that we were clear--obviously, some people do not think we were clear--that in looking at this issue of the dredged materials, and the disposal of the dredged materials and the permitting by the Army Corps of Engineers, that that could proceed. And, in fact, I think the Corps has now issued two of the necessary permits, but that while that was going on, there would be a contemporaneous process to look at whether or not the criteria---

Mr. Frelinghuysen. Is there not a potential here that the so-called contemporary process is undermining the original agreements?

Ms. Browner. No, absolutely not.

Mr. Frelinghuysen. Let me put into the record, I have letters signed by Jeanne Fox of Region 2 and Charles Fox--I assume no relation--of EPA Headquarters, saying that the sediments from Castle and Brooklyn marine terminals in New York meet Federal criteria for use as cap material at the HARS; that is to say, the dredged materials, according to their statements, are clean enough under the tough standards of the Ocean Dumping Act and the HARS regulations that they can go to the ocean site. Is what they have put in writing true and being abided by?

DREDGED MATERIAL: NATIONAL CRITERIA

Ms. Browner. Under existing criteria, yes, and that is why the Corps has moved forward with issuing the permits. But we have also been abundantly clear from the start that we would simultaneously review the national criteria with respect to this site. We are concluding that work now.

Mr. Frelinghuysen. Let me describe it this way: The public in my State is being subject to incredible claims and

distortion, I think, of facts perpetuated about the quality of some of this dredged material that your people have signed off on that said that it is clean. And there is nobody in the EPA that is rebutting these types of allegations. So the public perspective is, even though the fill is clean, it has been verifiable----

Ms. Browner. Under current criteria, that is correct.

Mr. Frelinghuysen. I think it is incredible that your Agency, which has obviously a desire to cap properly this 15 acres, and that is a desirable environmental objective, that basically that objective is being thwarted, while new criteria are sort of being raised as suggesting that things that have been bona fide, verified clean, now are perhaps not clean.

Ms. Browner. We were clear from the beginning that the permitting process should move forward. The administration has honored that. The permits have been issued, but we also are simultaneously reviewing the criteria. That was the agreement.

Mr. Frelinghuysen. But the problem is that the public needs to be reassured that the material you have already signed off on can be properly used to cap this site.

Ms. Browner. The permits are there. The Army Corps issued the permits.

Mr. Frelinghuysen. It takes more than permits. It takes some public reassurance, and that reassurance does not appear to be forthcoming. Because somehow somebody is throwing their arms around a whole new set of environmental criterion; in other words, ratcheting up to another higher level of environmental quality. But previously you have already signed off on the use of this dredged material.

Ms. Browner. It is not uncommon, and I think it is appropriate, for us to revisit previously set criteria, previously set standards, based on the best available science.

What we promised all of the people of this region is that the necessary dredging could go forward, that there were criteria in place, that permits could be issued. That has happened. But that simultaneously we would also look at the best-available science, which may have changed over the years. We may have more information, and determine whether or not in the future the criteria for this site should be different. We made both promises, and we are honoring both promises.

Mr. Frelinghuysen. Well, I can tell you that it is creating an incredible amount of turmoil, and I can tell you my colleagues on both sides of the aisle in New York and New Jersey obviously are betwixt and between on this issue. There is a real potential here that we could bring this metropolitan area of 17 million between New York and New Jersey, basically bring commerce and the economy to a screeching halt. All I am saying is that----

Ms. Browner. But there they exist.

Mr. Frelinghuysen. But if the materials are clean, and you signed off on them, you have got to reinforce in the public mind that we have some Federal responsibility to close down this dump. You are setting up a scenario here where we may, in fact, leave these 15 acres with no cover at all because we cannot come with any, on a timely basis, any satisfactory conclusions to a whole set of criteria, new criteria.

Ms. Browner. The permits are there, the dredging can go

forward, and the disposal can go forward. We will go out for comment on criteria.

There is a separate issue of once that is resolved, whether or not we make changes in the criteria--and we have not made those final decisions--there is the separate issue of what you would then do in terms of existing permits. That is a separate discussion.

Mr. Frelinghuysen. So the materials from the two marine terminals, which you have already given your blessing to, that can be used for capping purposes now?

Ms. Browner. Yes, for now. That is what the Corps permit says. They have a permit. That is what the Corps did.

Mr. Frelinghuysen. And so we can anticipate that those dredged materials, in fact, will be used, and you will go to the mat?

Ms. Browner. It is not our permit. It is the Army Corps of Engineers' permit. I do not know what is actually happening there. But I do know the permit has been issued, and under the permit, the dredged materials can be taken to the site.

MUD DUMP SITE: PUBLIC PERCEPTION

Mr. Frelinghuysen. All I am saying is that there is a campaign underway to suggest that materials that you have given a green light to, as being not contaminated materials, there is a campaign out there suggesting that these materials, which you have given the green light to, are now somehow contaminated by criteria that have yet to be implemented or decided upon. As a result, our port facilities are going to be I think negatively affected.

I mean, we have got lots of dredging to do in the Port of New York and New Jersey. And if the suggestion is allowed to stand that every dredged material, even clean sand somehow has some degree of contaminants, you are going virtually to guarantee that our port is going to close, and the thousands of jobs and the \$70 billion worth of commerce that come into the port is going to be negatively affected.

Ms. Browner. That is not going to happen. The administration is not going to allow that to happen.

Mr. Frelinghuysen. Well, I think you need to be a little more forthcoming here. The powers that be, certainly on the Republican and Democratic side, feel that the EPA needs to step forward and give us a higher level of reassurance, and I do not think it--it has not occurred to date.

Ms. Browner. The Corps issued the permits. We were part of that process.

Mr. Frelinghuysen. I understand the Corps, and I think we understand their method of operation. But it is the environmental issue that relates to their criteria. If you are ratcheting up the criteria, there is a strong likelihood that we may never have any materials to close this dump properly.

Well, I think you have got the message. I think Congressman Menendez and other members have shared with Jeanne Fox, and I certainly share with you, somebody needs to do something here. I mean, if we operate under one system, we ought to be able to use that clean material, and the sooner we use it, the sooner we can get the dump closed, good for all.

Anything else? Mr. Mollohan?

Mr. Mollohan. No, Mr. Chairman. I recognize we are 35 minutes over time right now. I want to thank very much the witness for appearing. As always, she is an excellent witness. And, again, I appreciate the good work she does administering a very complicated Agency.

Thank you, Mr. Chairman.

Mr. Frelinghuysen. Thank you, Mr. Mollohan.

Mr. Dickey, a few brief words?

NPDES BACKLOG

Mr. Dickey. Administrator Browner, I admire your endurance and your competence. Thank you for all that you have said today.

There are expired permits that are out there on point source pollution, and yet what you are doing is you are ignoring those and coming after what I call nonpoint source. Do you not have enough to do?

Ms. Browner. We have more than enough to do.

Mr. Dickey. What is the problem of ignoring the expired permits? How many do you have in the Nation?

Ms. Browner. The vast majority of these permits are now, fortunately, being handled by the States. I have had a very aggressive program since I came to EPA to turn over this permitting program to the States, and we have been successful. In turning it over to the States, we have all had to deal with a backlog.

Can I just tell you two things about the backlog that I think are worth noting? First, facilities continue to operate with existing permits in effect. They do continue to operate.

Secondly, one of the reasons we have a backlog is because some of these permits are really tough. We have made some progress in decreasing the EPA backlog. It has been, for my taste, far too slow. We are looking at how we can make better progress. But these are the toughest permits. That is why they end up taking more time. These are not the easy ones.

DICKEY BILL: H.R. 3625

Mr. Dickey. I have to go on to other questions. I have a bill, House Bill 3625, and Blanche Lambert has one, as does Max Sandlin. You, obviously, are not going to agree with what the intent of our bills are. What reason, briefly?

Ms. Browner. As I understand your bill--and I have read some of them, and I do not know if they are all identical--you would change definitions in the Clean Water Act that we do not believe need to be changed.

You mentioned earlier the issue of reauthorizing the Clean Water Act. I just might remind the members that the administration did send up comprehensive legislative proposals several years ago on how to strengthen and reauthorize the Clean Water Act. Nothing has ever really been done with those proposals.

TMDL: CITIZEN INVOLVEMENT

Mr. Dickey. I am going to run through these others, but this is the question that I have been concerned with the whole time: Do you really believe that the people who live and have their livelihoods on the land are going to pollute it to their own detriment?

Ms. Browner. Absolutely not.

Mr. Dickey. Then citizen involvement is something that can--we have done it. You and I have done it. Can you give more an opening for people to come talk to you and explain and work these things out, rather than having this hurried-up process?

Ms. Browner. We have been working on this for years, and as you well know, we are happy to meet with anybody. We are going to meet with you and some of your constituents this afternoon. We extend that offer to anybody. We will continue to do that.

This is important. Once this framework is in place, then the States will go through a very public process. I think quite frankly, when you move into the State-by-State arena, that kind of public participation will be enhanced. We are getting a lot of it now. We have taken it into account, rest assured. But remember, no two States are the same, and no two States' industries are the same, no two States' history is the same.

Mr. Dickey. I am going to have to interrupt you. There is one comment you made in your opening statement where, and you got it done by giving citizens information and letting them work. Would you consider that in this case with TMDL?

Ms. Browner. We believe we have done that, and we believe the proposal that we have made will guarantee citizens involvement.

Mr. Dickey. Thank you so much for your time.

Thank you, Mr. Chairman.

Mr. Frelinghuysen. We will have an opportunity to put extra questions into the record.

Thank you very much.

Ms. Browner. Thank you.

Mr. Frelinghuysen. And we meet on the 29th again. Thank you. Thank you, Mr. Mollohan.

Wednesday, March 29, 2000.

Mr. Walsh. The subcommittee hearing will come to order.

I would like to welcome all of you here this morning. It is quite an impressive lineup. I think we can proceed now without any further delay.

I would like to welcome the other members of the subcommittee. Mr. Mollohan is not feeling well this morning, so he won't be in.

This is the second day of two hearings that we have scheduled for environmental protection. Administrator Browner was here earlier this year, and we had intended to have two hearings, one this morning, one this afternoon. Obviously, there is just a panoply of issues that you all are very familiar with that we need to talk about. Because of the conflict on the supplemental appropriations bill, we won't be able to do that, so we brought everybody in this morning. The table is not big enough to accommodate everyone. I understand there are some who are sitting behind you that we may have to call forward.

There also may be an issue of timing for the morning hearing now because of the rule on the supplemental. So bear

with us. It is not for a lack of interest, I guarantee you.

I would ask if Mrs. Meek, on behalf of the minority, if she would have any opening statement that she would like to make.

Mrs. Meek. I have nothing.

Mr. Walsh. And I would recognize Congressman Frelinghuysen is also here this morning.

I don't believe there is any need for any opening statements on your behalf, but if there is, feel free.

Mr. Ryan. No, Mr. Chairman. We are assuming that you are going to proceed with questions.

NATIONAL AIR TOXICS ASSESSMENT (NATA)

Mr. Walsh. Very good. Let me begin with the air programs. Mr. Perciasepe.

The first series of questions regards the NATA project. It is my understanding the Agency has an ambitious project underway to develop a National Air Toxics Assessment tool that will allow the Agency to characterize the potential health risks associated with exposure to air toxics. The most recent schedule has it releasing in April, next month, the 1996 emissions inventory. Then in August you plan a public release on the Internet of exposure modeling results and estimates of the public's cumulative risk from 33 of the most prevalent air toxics in the country.

As I understand it, the information will include 16 different demographic groups and assess the risk to up to 37 indoor and outdoor micro-environments.

Given the ambitious nature of the task, the level of detail and vision, and the potential for informing or misinforming the public, I would like to ask you a series of questions about the program, and the first is, obviously, the idea here is to instruct the public. Has there been any public involvement in this program to this point in developing this data?

Mr. Perciasepe. Yes, but let me just say that the National Air Toxics Assessment process is more than just the exposure information or the modeling of exposure. It includes, as you have mentioned, the inventory of emissions. It also includes a broader coordinating effort of our air toxics programs at EPA to try to have a comprehensive approach to risk reduction.

Right now, under the statute, we have a technology approach called Maximum Available Control Technology. We are in the process of transitioning away from a technology approach to a risk-based approach which will look at finding the least cost and most effective way to reduce risk across all different sources.

The part that you are talking about in terms of the exposure estimates and the emission inventory is part of that process. So it is not just public information, although an important component of it is public information. It is also to help coordinate the programs with us and the States and the local governments.

Mr. Walsh. What has the public's role been thus far?

Mr. Perciasepe. The public's role is we put out some general information on an earlier version of this last year using 1990 emission data and testing the model. There had been

public disclosure of some of that information and discussion of that information in various areas.

What we would do with the information between now and its final release is to work with the State and local governments to do the ground-truthing of the data, which is something that we are in the process of starting now in advance of August.

As part of that process, we anticipate developing a public process with the States, because each State----

Mr. Walsh. There really isn't one in effect?

Mr. Perciasepe. Well, we would anticipate that that would happen more at the local level than at the national level.

Mr. Walsh. As I understand it, the portion of the information that I discussed will be on the Web before it has been subject to peer review, is that true?

Mr. Perciasepe. The modeling work and the analytical techniques are going through review. I am not sure that the results----

Mr. Walsh. Well, the conclusions will be published in August on the Web, is that correct?

NATIONAL AIR TOXICS ASSESSMENT (NATA)

Mr. Perciasepe. The current schedule is that, but, you know, one of the things we have to do between now and then is to go through a process with the State and local governments to review the emissions inventory to make sure that we don't have any anomalies in the emissions inventory that was reported to us using the 1996 data. There has to be some quality assurance and quality control on that work that we are undergoing right now.

Mr. Walsh. Do you consider that peer review?

Mr. Perciasepe. Well, that is part of a review process. I wouldn't say that that is peer review. The actual analytical methods in the modeling go through peer review.

Mr. Walsh. Well, pertaining to the simultaneous public distribution of the information that is developed in this, doesn't this undercut the value of a peer review process? I understand you want this to get out to the public, but if it is not peer reviewed, and the peer review starts after the fact, you may have some public relations problems on your hand.

Mr. Perciasepe. Let me try again. We are now in the process of initiating a review process with the States to make sure there is no outlying incorrect data in the inventory of the actual emissions we get from the States. Then there is a model that takes that emission data and estimates what the ambient exposures might be. That modeling work is what goes through peer review. The emissions inventory goes through a quality assurance/quality control check with the States. They are the ones that provided us with that information.

I am going to have to say in honesty I am not exactly sure where the peer review of the model is. I think it has been done, but I don't want to say that that is my definitive answer here, Mr. Chairman. If I could answer for the record on where the peer review of the model is.

[The information follows:]

Peer Review of the National Air Toxics Assessment (NATA) Models and Methods

The modeling approaches being used as part of the NATA 1996 national-scale assessment are a mixture of previously peer-reviewed approaches and relatively new science which is undergoing peer review during the assessment process. The national-scale emissions inventory (the 1996 National Toxic Inventory) which drives the modeling process is largely a product of peer involvement. To develop this inventory, technical staff in the state and local air pollution agencies work together with EPA staff to pull together the best available information on air emissions of all the hazardous air pollutants (HAPs) for the year 1996. The methods for measuring, estimating, and calculating these emissions are all individual subjects of peer review, but the full inventory itself is not. This is consistent with the development of emissions inventories for all the criteria pollutants.

The air dispersion model being used for the assessment, the Assessment System for Population Exposure Nationwide (ASPEN), has been peer-reviewed by the EPA's Science Advisory Board in the context of its use in the Cumulative Exposure Project. While the peer review identified some shortcomings of the model, it is still recognized as the most useful tool for this type of national-scale assessment for air toxics. The air pathway exposure model, the Hazardous Air Pollutant Exposure Model (HAPEM4), has been previously subject to peer review in the context of its use for estimating exposures from mobile source pollutants. It has been modified from previous versions to account for the partitioning of the 33 urban HAPs between typical outdoor monitoring sites to indoor locations and multiple micro-environments. These modifications are currently undergoing internal and external peer review prior to their use in the assessment. The cumulative risk approach being used for the assessment is also currently undergoing internal and external peer review, along with the overall assessment approach of integrating these various modeling results together for the full quantification of inhalation risks. Once the national-scale assessment results are completed, the entire assessment approach, the results, and the interpretation of those results will be documented and subjected to a full review by the EPA's Science Advisory Board in the fall of 2000.

Mr. Walsh. Yes.

Mr. Perciasepe. But the modeling work, the analytical work in the model, is what would go through peer review.

Mr. Walsh. That would be helpful to know. Obviously, if we are going to have faith in the model, we would want to have faith in the process of developing the model.

Mr. Perciasepe. Right.

NATIONAL AIR TOXICS ASSESSMENT (NATA): USE OF DATA

Mr. Walsh. According to your budget justification, one of the stated purposes of the NATA is to assist the Agency in determining the effectiveness of the Nation's air toxics programs. Please tell the committee whether NATA will be used

to measure EPA's progress toward meeting the statutory goal in Section 112(k) of the Clean Air Act of a 75 percent reduction in cancer incidence considering all emissions reductions from stationary sources?

Mr. Perciasepe. It will help in doing that. Remember, the National Air Toxics Assessment program is more than just the model we were just talking about in terms of exposure estimate. It is also the monitoring in the field; we are increasing the number of monitors out there working with States. It also includes coordinating the different regulatory programs that might be out there and voluntary programs that might be out there between us and the States in terms of reducing emissions.

So the overall idea behind the National Air Toxics Assessment program is to be able to have the kind of information we will need to track that progress.

Mr. Walsh. We will submit additional questions for the record because we just really do have a time limitation.

Mr. Perciasepe. Understood.

ACID RAIN DEPOSITION

Mr. Walsh. There was a recent story in a local paper that I believe originally came from the New York Times. It said that the results of the Clean Air Act were not as expected in acid rain deposition in the Adirondacks and that the fact was that while sulfur emissions were down somewhat, nitrogen oxide emissions were up.

I think the conclusion was that while we are impacting on power plants, we are not on auto emissions. Is that a true assumption?

Mr. Perciasepe. Well, nitrogen oxide emissions in the United States have not gone down since 1970 like the other pollutants. Since 1970, when the first Clean Air Act was enacted, nitrogen oxide emissions are up in the United States, whereas all the other pollutants are down, including sulfur dioxide.

Now, the sources of nitrogen oxide are many, but transportation systems and power generating are two of the major sources of nitrogen oxides.

On the sulfur dioxide front, the acid rain program is entering this year into phase two of the acid rain program going toward the congressional goal of a 10-million-ton reduction in sulfur dioxide. We are already seeing, at least from the sulfuric acid side of it, about a 25 percent reduction in acidity of rainfall in the Northeast. But that report that you mention and other analyses that we have been doing demonstrate clearly that we need to finish phase two of the acid rain program and we need to continue to also look at nitrogen oxide emissions because of the acids that are also formed from that.

Mr. Walsh. Is there a different impact resultant in those high-elevation lakes, different from sulfurous emissions than nitrous emissions?

Mr. Perciasepe. There are going to be two separate kinds of impacts from these acidic depositions. One is the pure impact of having acid rain and the changing of the pH of the water body. That will be the same.

Mr. Walsh. They both have a similar pH impact?

Mr. Perciasepe. Yes, that will be the same. However, with nitrogen acid, nitrogen--you know, nitrous or nitric acid, which is basically, I think, hydrogen and some oxide of nitrogen. I think I got that right. That also can get into the food chain or into the nutrient cycle because nitrogen is also a nutrient, whereas sulfur is not. So you have the additional potential, particularly in coastal waters, of eutrophication from nitrogen deposition with the nitrogen acids.

Mr. Walsh. The water becomes more fertile?

Mr. Perciasepe. That is correct, which is kind of----

Mr. Walsh. Interesting.

Mr. Perciasepe [continuing]. A paradox. In freshwater it becomes more acidic and more sterile. In coastal waters the acidity is somewhat buffered out, and the nitrogen oxides part of it will become a nutrient.

Mr. Fox. Mr. Chairman, if I could just add for a more complete understanding of this?

Mr. Walsh. Sure.

Mr. Fox. The best data we have in places like Chesapeake Bay or North Carolina suggests that upwards of 20 percent of the nitrogen, of the nutrients, is, in fact, coming from atmospheric sources.

Mr. Walsh. Thank you. I am at about 10 minutes, so I think will yield at this point to Mrs. Meek. Thank you.

CORAL REEF RESEARCH

Mrs. Meek. Thank you, Mr. Chairman.

My first question has to do with the Rosenstiel School on Coral Reef Research in Miami, and this question is for the Assistant Administrator for Research and Development, Ms. Noonan.

Ms. Noonan. Yes, ma'am.

Mrs. Meek. I know you are more interested, you are very interested in fully understanding the threats and challenges to our fragile coral reef system in Florida, particularly in Miami. To this end, I am sure that you understand that EPA has funded this program in atmospheric sciences for quite some time, particularly in 1999 and the year 2000.

I would like you to tell me your evaluation, Ms. Noonan, of this particular program. How well do you think it is working and how can it move forward more effectively?

Ms. Noonan. Mrs. Meek, I don't believe we have done an evaluation of the work that the Rosenstiel School is doing, although they do have a very good reputation in the area of ocean sciences and coral reef biology. Their award has been made for 1999 and will shortly be made to them for the year 2000. We have been negotiating with them on that award, and they have submitted acceptable responses to the peer review of the award.

I think I can say that based on the peer review, we believe they are doing research of an acceptable quality to us, and we anticipate that that will be true for the year 2000 as well.

Mrs. Meek. Thank you. Could you provide me with information on EPA's initiatives in this arena as well as your progress on working on this project with this center, that is, the

cooperation with the EPA and this particular center?

Ms. Noonan. Yes, ma'am. We will be pleased to provide that for the record.

[The information follows:]

Coral Reef Research

To date, cooperation between EPA and the National Center for Caribbean Coral Reef Research (NCORE) has focused on the logistics of funding the center. Now that the FY 1999 funding has been awarded, the EPA project officer and the interim directors have been corresponding weekly regarding the pending choice of a permanent director, the quality assurance officer, and the Science Advisory Committee (SAC). The first meeting of the SAC is tentatively scheduled for the summer of 2000.

EPA also has two current solicitations for research through its Science to Achieve Results (STAR) grants program that are relevant to coral reefs. The first, Environmental Indicators in the Estuarine Environment, requests research to develop indicators ``useful for evaluating the `health' or condition of important coastal resources (e.g., lakes, streams, coral reefs, . . .).'' The second solicitation, Development of National Aquatic Ecosystem Classifications and Reference Conditions, requests research for ``development of classification schemes and reference conditions for establishing biological criteria in . . . and coral reef communities.'' In addition, EPA is also conducting research on the effects of UV-B, infectious diseases, and nutrient enrichment on corals in South Florida.

AIR QUALITY STANDARDS

Mrs. Meek. All right. My other question has to do with EPA rules and CMAQ funding for Miami Dade County. TEA21, which I voted for, provides for the flexible use of congestion mitigation and air quality funds for areas, mostly urban, that do not meet air quality standards. One of the measures of maintenance is the amount of ozone found in the air. My question having to do with that is: You used a 1-hour reading in this regard to establish non-attainment or attainment in terms of the maintenance status. Recently, the EPA changed this measurement from a 1-hour reading to an 8-hour reading. In doing so, the South Florida area, including Miami Dade County, lost its maintenance status and, therefore, its eligibility for CMAQ funds.

The EPA was ordered by a court order to go through the rulemaking process again, and the EPA has indicated that it will continue to use the 1-hour reading as well as several other factors.

My local county government in Metro Dade County certainly believes it is of great importance to ensure that the 1-hour reading criteria be part of any new rules. Your funds have been used in Dade County for projects such as the South Miami Dade Busway and most of the bus service improvements on our busway.

If my area is no longer eligible for CMAQ funds, transit projects in that area would suffer, as well as other highway projects aimed at reducing congestion.

Now to my question: Are you going to maintain the 1-hour

ozone reading to determine air quality standards? And will the same 1-hour standard be found in any new rules addressing air quality in that transit and bus system has a basis on how you rule in terms of the 1 hour? Tell me where you are in that regard.

Mr. Perciasepe. You are correct that the new standards, the so-called 8-hour standard, which is based on a longer exposure averaging period, has been remanded to the Agency by the Circuit Court of the District of Columbia. We are in the process of going through a judicial appeal of that, which will take some time to settle out. In the meantime, we had removed the 1-hour standard from areas that were attaining it so that we could get on with work on the new standard.

What we will be doing this year is bringing the 1-hour standard back while we wait for the judicial process to be completed, and at that time we can work with Miami Dade to see what their status would be. I am not sure exactly what their status would be when that happens, but we certainly would work with them. It may very well be involved with the CMAQ funding that you are talking about.

Mrs. Meek. It would greatly impact negatively our CMAQ funding if the 1-hour criteria is not sustained. So that is my prime interest in asking that question.

LEAD POISONING

My next question has to do with lead poisoning. I am pleased to see that you finalized your rule. It requires contractors to provide lead hazard information to consumers before renovation or remodeling in homes that were built before 1978.

Would you provide us with some additional information regarding the other regulations you anticipate issuing this year regarding home renovation?

Ms. Wayland. Yes, Mrs. Meek. Let me first say that we very much appreciate your interest and your support on behalf of the children of this country in assessing and dealing with lead poisoning. I know that you are very much aware that we still have almost a million children in this country who are affected by lead, and lead is a completely preventable problem. If the Federal Government and the private sector work together, we believe that we have a strategy that could virtually eliminate the problem of lead poisoning in this country over the next 10 years. We have a newly released report on Federal strategy that I am happy to give you. I think you will be interested to see it.

In terms of your specific question, as you know, the disclosure, the prenotification rule, is final. We have been in a compliance assistance mode with that rule. At the request, actually, of Mr. Frelinghuysen earlier in this process, we have done a lot of outreach to the apartment owners and landlords in order to make our rule as simple as possible but also providing parents the information that they need to protect their children.

In terms of this year, we have a couple of rules that we think we will either be going final with or proposing. One is a final rule that we expect to be done by the end of December

that deals with lead hazard standards, and that was a rule that was proposed in June of 1998. We extended the comment period on that rule several times. We have voluminous comments on the rule. A lot of folks think the numbers we suggested for standards are not protective enough. We have obviously, on the other side, some stakeholders who believe that perhaps the numbers are more stringent than they need to be.

So that is one rule that we are going to be going final with, and we expect to publish that at the end of this calendar year, sometime in the month of December.

The other rule that we expect to be proposed this year is one that deals with renovators and remodelers who will be going into homes in order to do lead abatement work. This went through a SBREFA panel. We recently finished that panel, and expect to be proposing a rule sometime, I expect, this fall--either late summer or early fall. That rule will outline what kinds of qualifications and procedures that renovators and remodelers ought to be adhering to in order to properly do the work to adhere to the standards.

Mrs. Meek. I thank you, and I would like you to please meet with me and my staff regarding lead poisoning. I have several public housing projects in my district, and it is amazing to see the level of lead poisoning among the children there, and I would like to meet with you possibly to help me think through some strategy that we can use in that area to assist us in eradicating some of the problems we have there.

Ms. Wayland. We would be very happy to meet with you, Mrs. Meek, and probably should include HUD in any meeting with you.

Mrs. Meek. Yes.

Ms. Wayland. Because the Federal strategy involves not only EPA, but----

Mrs. Meek. We have been on them already.

Ms. Wayland. Okay. Well, we are very happy to come up and meet with you.

Mrs. Meek. All right. Thank you very much.

Mr. Walsh. Mr. Frelinghuysen?

MTBE

Mr. Frelinghuysen. Thank you, Mr. Chairman. Good morning, ladies and gentlemen.

First of all, on a high note, I want to thank you for acting on MTBE. I suppose it was only a coincidence that it was a few days after our hearing with Administrator Browner, but whatever the circumstances are, we are moving towards banning it, we are eliminating it, and the sooner we do it, I think it will be better for all of us. I don't think anyone would have foreseen, although there was some evidence in the late 1980s that there was pollution of our water supplies from this additive, that this would catch the public's concern, to the degree there is, and it is a pretty horrendous situation.

Mr. Perciasepe, you have suggested, at least in my local papers, that we could keep our air clean, in your own words, with other formulations that don't pollute the water. I think that was a statement attributed to you. At least I clipped that out. What are the other formulations? I think most of us are familiar with ethanol, but I just wonder if you could tell the

committee briefly what other formulations you are looking at, and most particularly, whether any of these alternatives in their own right pose potential health or environmental concerns?

Mr. Perciasepe. Yes. Let me first of all thank you for your support on that, and, hopefully we can all work together and create the adjustments to the Clean Air Act we are going to need to solve that problem.

Mr. Frelinghuysen. I am pleased that the administrator did use a few of the citations we suggested, but I suspect she was probably familiar with those to begin with.

Mr. Perciasepe. Let me say, in addition to the environmental issues here, there are issues of the volume of gasoline we have in the United States. There are about 4.5 billion gallons of MTBE used out of a little over 100 billion gallons a year of refined gasoline product used in the United States. So if we reduce that volume, we are going to have to replace it with something. Clearly, we have stated that we think a lot of it ought to be replaced with ethanol, but not necessarily solely to achieve the air quality rules. Ethanol will help and will contribute to air quality benefits in many of the same manner as other oxygenates. But there are other ways to formulate gasoline, as I mentioned in that article. And, of course, when you are being interviewed over the phone by a local newspaper and trying to talk to the reporters, sometimes things get lost in the translation. But I think that statement was relatively correct.

There are things we need to consider here. The gasoline that we are talking about, with or without ethanol or MTBE in it, is very toxic. There is benzene, toluene, xylene, and other aromatics and alkylates. But the unique property of MTBE of not sticking in the soil like the other parts of gasoline and moving more quickly in groundwater has exacerbated this problem.

The alternatives that oil refineries will probably look to--and I don't want to second-guess them, but we want to be able to provide some flexibility and be able to model those results--would be things like: alkylates, which are longer-chain carbons; carbon molecules that are also part of the refining process; and, iso-octane, which comes from some of the same chemicals they are using now. These chemicals do not appear like they would act the same way in the soil, that is they would stay with the rest of the gasoline if it leaked. And we expect that gasoline will always leak a little bit somewhere. You never can completely, 100 percent stop that. And, of course, ethanol is a formulation.

So we want to work with Congress to develop a flexible framework for refiners to meet those air quality goals, and we think there are other ways that they could create the gasoline recipe that will still be clean-burning in the automobile.

So those are just a couple, but, again, I am not the refining expert. Maybe the Department of Energy could help us.

MTBE ALTERNATIVES

Mr. Frelinghuysen. But if we ban it, we eliminate it as an additive that is used now, you are giving the committee some

assurance that if we choose other additives that they won't-- obviously, gasoline in any form, if improperly used or contained, can cause problems. But your Agency is taking a look at, obviously, those alternatives to see whether they pose any additional health or environmental hazards.

What about the issue of supply? People talk about ethanol as if it is, you know, an endless supply out there. But what about the issue of supply? And is there an adequate delivery system? I think sometimes people get excited about delivering this and that, but in reality, for some of us in the Northeast, it is easier said than done.

Mr. Perciasepe. Yes, I think supply is an important issue that Congress and the administration will have to take into account as we tackle this problem. It isn't quite as simple as just saying, well, let's get rid of MTBE. As I said, it is 4.5 billion gallons, approximately, used and that volume will have to be filled up with something.

Right now, between ethanol and MTBE, ethanol is about a little over a billion gallons a year used in the United States and MTBE about, 4.5 billion gallons. That volume is largely domestically derived. MTBE is derived from natural gas. You take methane and you make methanol, and then you do some other reaction and you make the methyl tertiary butyl ether.

The objective from a broader energy policy and energy security perspective would be to try to fill as much of that volume on a national level with domestically produced fuel. That is where ethanol comes in in another way other than air quality as a possible and potential solution--and what we recommend be part of that solution.

Now, if you look at this nationally as opposed to--if you allow flexibility to achieve the clean air goals in places like New Jersey, let's say, but have a national volume increase of things like ethanol and balance that out, there may not necessarily be distribution issues. There is a way to try to balance the need for domestic production of energy, but also not force-feed a distribution of that energy in a way that would be counterproductive or more difficult to do.

OCEAN DUMPING SITE

Mr. Frelinghuysen. Thank you for your response. I want to shift gears and segue into just a few questions on the Superfund program.

Your Agency is the critical mass in terms of things that we need to do relative to issues that relate to dredging and disposal in Port Newark and New York. Congressman Menendez and I and Congressman Crowley from New York met with Jeanne Fox, and I would like to reinforce, for whoever's jurisdiction this is, that this port is going to shut if the department continues to have the criteria for disposed materials sort of a moving target. We were extremely emphatic with Jeanne Fox that the Agency has to have a degree of courage when there are people out there suggesting that the materials that are Category 1, the cleanest materials, that somehow those materials are contaminants. It is 15 acres as a result of probably 50 years of New Jersey and New York dumping that has environmental problems out there. The HARS dump, the mud dump, that needs to

be properly capped and done in an environmentally sensitive way. If your Agency doesn't take some courage to combat publicly the type of misinformation and scare tactics, then I think it will be a sad day that we can't close that dump in a proper way and potentially in the future may not be able to dispose of any materials anywhere, land or elsewhere.

Just a brief response. I am using up most of my time on my statement.

Mr. Fox. I will keep this very brief. As the Administrator mentioned at the last hearing, we are committed to implementing the agreement and ultimately remediating the HARS with clean material sufficient to protect the environment.

As you indicated, we are in the process of applying new sound science to make sure that the materials that are deposited out there will, in fact, meet that test of being protective of the environment. It is our hope that this new evaluation framework will, in fact, be out for public review later this spring. It has already gone through some peer review. We have talked with the Corps of Engineers about this so that hopefully we can work together on this problem.

Mr. Frelinghuysen. Well, I would like to emphasize for the record that the materials that are Category 1 now that have been approved under the old criteria have gotten their clean bill of health from your Agency. And now somebody is ratcheting up the whole notion that the criteria ought to change. We may be in a position at some point here that we can't close the dump properly, and that would be, I think, probably a huge hazard to those who use our shores for recreation, who do fishing off our shores. And for our delegation members, there is some division in New York and New Jersey, but certainly from those of us who come from the north, we have got to take some action. We don't need a moving target. We don't need the criteria to continue to change.

You are telling us for the record that the criteria are going to be out at some point in the future?

Mr. Fox. Yes.

Mr. Frelinghuysen. How soon?

Mr. Fox. In fact, I appreciate the analogy of a moving target, but our goal here is to apply sound science to our decisions as this committed directed us.

Mr. Frelinghuysen. Well, this committee loves sound science, don't we, Mr. Chairman? We like sound science, not political science.

Mr. Fox. And we are doing our best----

Mr. Frelinghuysen. We are counting on you.

Mr. Fox. And as part of sound science, we need to look at a number of bioaccumulation factors, for example, and we are going to be coming up with new criteria to assure that the environment is protected, and these criteria will be out for public review, as I said, this spring. And we have already shared some of these discussions with the Army Corps of Engineers. We plan on talking with the States also before this goes out for public review, and then we will have a public debate about the new criteria.

Mr. Frelinghuysen. Thank you. Be sure to include us in those discussions as well.

Mr. Fox. Absolutely.

Mr. Frelinghuysen. Thank you very much.
Thank you, Mr. Chairman.
Mr. Walsh. Thank you.
Mr. Price?

SUPERFUND

Mr. Price. Thank you, Mr. Chairman.

I want to welcome all of you here today, and I first would like to address my first question to Mr. Fields having to do with the Solid Waste and Emergency Response programs and Superfund in particular.

In July, GAO issued a very positive report on the efforts to clean up toxic sites under the Superfund program. According to this report, of the 1,231 sites on your national priority list, work on 595 sites had been completed at the time of that report.

The report also states that in the additional sites, approximately two-thirds of the cleanup work was complete or well underway.

Do you in general terms agree with these conclusions? Is there any update that you would want to add? And could you tell us what that means for the future of the Superfund program in terms of funding requirements?

Mr. Fields. Yes, we do agree with that GAO report. Obviously, there has been some update since that report was completed. We now have completed construction at 680 sites on the Superfund list, which is about 52 percent of the Non Federal Facility on the NPL sites. We now have construction underway at more than half of the others, so 92 percent of the Superfund sites either have construction complete or construction underway.

We will have 64, or roughly two-thirds, of the Superfund site construction complete at the end of fiscal year 2002. We believe the administrative reforms which have allowed us to achieve 85 construction completions each year for the last 3 years have been working to reduce costs by 20 percent and reduce time by 20 percent.

I think for the future, the last part of your question, we still, though, recognize there is still more work to be done. A study we did in 1997 indicated that to complete the remainder of the Superfund sites, the private sites on the Federal Superfund list would cost another \$13.6 billion. That did not include the approximately 80 sites that have been added to the list since 1997. This means that we still are going to need some substantial funding along the lines of what we are requesting in the fiscal year 2001 budget for the next 5 or 6 years to deal with that backlog of sites that still need construction completion. But we think because of the job we have done with the administrative reforms where we have saved costs and made the process work better, the cost burden will be not as great. But we still need a substantial source of funding to complete the job of getting the remainder of the roughly 50 percent of the Superfund site construction completed that are on the current list as well as deal with any additions that get added over the next several years.

Mr. Price. All right. Thank you.

Let me turn to the portion of the Superfund program that deals with research. This research--is funded through EPA but, as you know, is carried out by the National Institute of Environmental Health Sciences within NIH. That research item is being reduced in the President's 2001 budget, and I would like to ask you why. Is this just a matter of money, or do you have concerns about the quality or relevance of the science that is being supported by these projects?

Mr. Fields. No. We are very supportive of the work that NIEHS has been doing for a number of years. That request for \$48.5 million for NIEHS represents what the administration has consistently requested for the last 4 years for NIEHS. Congress has increased their budget this year, for example, to \$60 million, but what the President has requested is consistent with what we have been requesting for the National Institute for Environmental Health Sciences for the last several years.

We have tried to balance cleanup dollars versus research needs, which are very important. We have reflected that with a substantial budget of almost \$50 million we are requesting. But as you recall, Congress cut the Superfund budget for fiscal year 2000 by \$100 million, so we have got to make some tough choices when the budget is being cut by \$100 million, which means we won't be able to start 15 new construction projects. You have got to balance how much you devote to the critical response needs to get sites cleaned up versus what you also need to do critical research.

So we have had to balance those things. Keep in mind that the administration request for NIEHS has consistently been the same for the last 4 years while at the same time the Superfund budget is taking a \$100 million hit in fiscal year 2000. So we have had to balance that. We think that the President's budget request of \$48.5 million will allow NIEHS to do the critical research that they have been doing for the last several years, as well as implement as part of that budget a \$23 million training program, which we believe is also important.

Mr. Price. Well, focusing on that research budget, though, this has been going on at the \$60 million level, as you said, and you are talking about a substantial reduction. But you are saying that doesn't imply that some of that research is defective or dispensable.

Mr. Fields. No, we are not trying to make any judgment at all regarding, the quality of the research. We believe NIEHS has done some important work for us, both in the research arena and training arena. This budget request reflects the reality of setting priorities in the overall budget.

The Superfund budget has basically four pies: 70 percent of the budget goes to response and cleanup; 10 percent goes to enforcement; 10 percent goes to management and support; and 10 percent goes to other Federal agencies like NIEHS. We, as an administration, have consistently maintained that request at the same level while at the same time the response portion of the budget, which is where the critical cleanups are being done, is being hit by a substantial reduction this year.

Mr. Price. And the Congress has rather consistently built on that request, and so that is really the baseline we are

working from. According to NIH, all 17 research centers that are currently funded through Superfund are up for recompetition this spring. Do you have any idea how your proposed reductions would affect this competition?

Mr. Fields. Well, Congressman, we have advised NIEHS of research that would be most relevant to our needs in Superfund, and scientists from across the Agency participated as members of the peer review panels that reviewed the proposals for the new research that will be conducted. We believe that with this budget request more than \$25 million would be available to do research by these universities under the Superfund Basic Research Program. We believe that substantial, critical, good research can be done with that amount of money. We think that the budget request that we are submitting for 2001 will still allow those university programs to continue to do very important work in support of the Superfund program.

Mr. Price. All 17 research centers?

Mr. Fields. Yes. Obviously, when you are funding them at a level which is roughly a \$10 million reduction. I recognize that that means that those individual universities will not get as much money, but they still will get a substantial amount of money to do important research in the Superfund program.

We have got to keep in mind that in addition to the research that NIEHS is doing, EPA also funds a very important research program for the Superfund program through the Office of Research and Development. The Agency for Toxic Substances and Disease Registry in Atlanta is also doing important Superfund research, and all of that is being balanced as we consider the overall funding request for research out of Superfund. NIEHS is obviously a major player, but they are not the only player that is doing important research here.

CLEAN WATER ACT--TMDL

Mr. Price. All right. Well, thank you. We obviously are going to have to look at this very carefully as we formulate the final bill.

Let me turn to Administrator Fox, if I might, in the time I have remaining here. I would like to turn to the total maximum daily load regulations. I would like to ask you what the current status of implementing the TMDL provisions of the Clean Water Act are. How many water bodies now have TMDLs? What is the estimated number of remaining water bodies that will require TMDLs?

Mr. Fox. Starting backwards, our estimate of the number of water bodies that will require TMDLs is approximately 20,000. Under our current proposal, the States will have a 15-year period to do that. There are approximately, I want to say, 1,000 TMDLs that have been completed or are getting close to being completed, and I can get you that specific information.

I think a little bit of context on this is important, if you---

Mr. Price. Was there some kind of schedule for establishing these TMDLs in the Clean Water Act? What has the timetable been in your own planning, and what has been the source of the delay in establishing these TMDLs? Obviously, this has not moved along very rapidly.

Mr. Fox. This goes to one of the reasons I think it is very important that we move forward on our new regulations. There is currently no requirement for the States to have a date certain by which they will have TMDLs, and our proposal allows them up to 15 years.

The reality is that we are finding a number of courts around the country are giving us time frames that I believe, frankly, are unworkable. We have some courts that are giving us 7-year time frames for some states. I believe it is very important to have federal regulations that outline our time expectation, so that we can give the states the appropriate amount of time to work with our communities to develop cost effective solutions.

Mr. Price. So what is the status of that though? You have this pressure from these court decisions.

Mr. Fox. We have little discretion from some of these court decisions. Our proposal right now is that we would finalize our suggested revisions to this program by this summer. We are looking towards the end of June to finalize our proposal. They would become effective for the next state submission of their list, which would happen over the course of the next two years after that.

Our proposal is designed to give the state and local governments the maximum flexibility in solving these problems themselves as opposed to having it being dictated by the courts or by the federal government.

Mr. Price. I am getting the high sign from the chairman. I do want to pursue this, and we will do it in the second round of questions.

Mr. Prescott. Thank you.

Mr. Walsh. Mr. Knollenberg.

NOX SIP CALL

Mr. Knollenberg. Mr. Chairman, thank you very much. And welcome, Panel.

I want to relate to the NOX SIP call situation very briefly. Last year when Congress passed the VA/HUD appropriations bill, the conferees took note of the fact that it was a longstanding linkage of the NOX SIP call and the 126 petitions, and we encouraged EPA to maintain that linkage, notwithstanding the pending litigation at that time. I recall that when Administrator Browner testified a few days ago, she also took note of that linkage, and indicated a desire to retain it. I assume all of you would agree with that; is that right? It would be Mr. Perciasepe.

Mr. Perciasepe. Thank you, Mr. Knollenberg. We are still in the process of evaluating the recent court ruling on the NOX SIP call. As the Administrator said, our objective would be to provide flexibility to the states, as envisioned under the NOX SIP call, as to how they would construct their plans to achieve these goals. In addition, we are committed to keeping some degree of coordination between different programs.

Mr. Knollenberg. The primary objective is to apply the NOX SIP call to development states, right? And then that Section 126 is a fallback authority? I assume you would

agree, on the basis of what you just said, that----

Mr. Perciasepe. Well, they are independent authorities in the Clean Air Act. One is petitions by states to the agency to deal with interstate transport of pollution. The other one was born out of a consultation process with states, which everyone didn't agree on but nonetheless, it was born out of an interstate consultation process. We would like to make sure that the states that are involved have the flexibility that was envisioned in the NOX SIP call to be able to craft their plans.

Mr. Knollenberg. Let me go into specifically now what I am leading up to. And as you know, the NOX SIP call is in litigation now, and with a 2 to 1 decision by the courts, my understanding is it is subject to a rehearing, and the date for the submission of the SIP has been stayed by the court. The compliance date of May 2003, however, in the NOX SIP call and the 126 petitions has not been stayed, making the time for compliance by the states and the sources between the submission date and May 2003 that much shorter as every month goes by. So since the states that challenged the EPA rule will be given more time to submit their SIPs by the court, if the most recent decision is upheld on appeal, that date of May 2003 in the NOX SIP call and 126 petitions for compliance by individual companies becomes more unrealistic, and I would presume that you would agree that there should be some back end time added on to that May 2003 date as would be necessary. I think it only fair. Would you agree with that?

Mr. Perciasepe. Well, I am not sure I do agree with that, Mr. Knollenberg. And I think that----

Mr. Knollenberg. Considering the link between the two?

Mr. Perciasepe. Well, we have already moved ahead on the 126 petitions, and truly, 50 percent of the emission reductions that are covered under the NOX SIP call are required by May 2003 under the 126 petitions. And the court specifically did not stay EPA's 126 action when it was asked to do so. Now, it is true that the court will still hear the merits of that case, but it did not stay the 126 action. So, if you wanted to dissect it a little bit, 50 percent of the emission reductions that are covered under the SIP call are already under an unstayed agency action on state petitions that require sources to complete their work by May of 2003.

But, I have to say that we are still evaluating the case that was just completed by the D.C. Circuit, as you mentioned, and so I would reserve all the final answers on these issues. Nonetheless, there clearly are actions out there that keep that 2003 date in a pretty active----

Mr. Knollenberg. We have some concerns about, obviously, hoping that we can get some back end time if that were to develop into a scenario where we would be forced to--almost with no opportunity to----

Mr. Perciasepe. I note that from your questions.

GREAT LAKES INITIATIVES

Mr. Knollenberg. I want to get into this Great Lakes Initiative, and I brought this up with the administrator when she was here just a few days ago. It is the \$50 million

initiative, and obviously, being from Michigan, I am not against any kind of opportunity that would improve the Great Lakes situation. We look forward to any number of measures that would help us in that regard, but I want to state that what I am concerned about is the fact that this money that was mentioned in the State of the Union address by the President, was practically unknown to any of the rest of us. Now, Administrator Browner mentioned that if I had come to her, she would have been able to tell me what it was. But here is what we found out--and I will repeat what I told her--nobody in Michigan, no member of Congress, the House or the Senate, knew anything about this, zero. We still don't know much about it, and in questioning of various panels, we haven't found much that we can rely upon that would be, I think, succinct in offering directions as to what might take place here.

I have discussed this with Mr. Frampton, with I think CEQ, and Ms. Browner, and the most significant thing that I have gotten from any of them is that it goes back to the '80s, something that came up in the '80s, which we haven't touched. And what I am concerned about is this political puffery only? Is it just political science? Is there somebody back in Michigan that is aware of what all of this is? We don't seem to know.

And before you rise to that, Mr. Fox, Ms. Browner also stated that previously that this initiative had been discussed prior to the State of the Union speech. I don't know where it was discussed or what was discussed, or whether it was done privately with some individual or individuals, but Congress, which authorizes most of these programs--and they were overlooked here--knows nothing about this.

Mr. Fox. First----

Mr. Knollenberg. And why weren't Michigan members of the House and the Senate given information on this?

Mr. Fox. First, I would be happy to give you any number of details that you would like about our ideas for the program, and would be happy to spend as much time as you would like on that.

In terms of the question of notification, frankly, we typically do not present information that is in the administration's budget before the President announces the budget. That is generally the ground rule that this administration and previous administrations have been----

Mr. Knollenberg. Ms. Browner said that, ``If you had come to me'', she could have told me.

Mr. Fox. Well, I was here for her testimony, and I think the intent of her explanation was that we were trying to solve a long-term problem that in fact grew out of the 1980s. When the US and Canada got together and they identified a series of what we call ``areas of concern'', which are places where water quality is very poor throughout the Great Lakes. There are a total of 43, in either U.S. or Canadian water. There has been tremendous progress over the last decade or more in resolving some of these problems, but one of the limiting factors is the lack of money to implement some of the cleanup projects in these areas of concern.

Mr. Knollenberg. Is money coming from someplace else?

Mr. Fox. Currently, many of the dollars are coming from

state and local governments, and some federal dollars. We have currently about an \$18 million Great Lakes budget that supports some of the work in this area. But our idea with this proposal was to provide additional federal funds with a very high matching requirement, so that we can in fact encourage additional contributions from state and local governments, and really try to get on with the task of cleaning up these areas of concerns, of which there are 31 either exclusively in United States waters or in shared U.S.-Canadian waters.

GREAT LAKES: COMMUNITY ELIGIBILITY

Mr. Knollenberg. Well, you know what has happened, Mr. Fox, is that since this initiative came into being, various members of Congress--Michigan certainly and I think Wisconsin; I don't know where else--are scrambling to put their own bill out there to authorize, and I question why the administration wouldn't first seek perhaps some authorization from Congress on something of this kind. Now I can tell you that there are at least three bills that are in the making, and I think largely because of the fact they just don't have any faith and confidence in what the EPA might be up to. They have concerns. We have yet to hear any word about a specific place, town, city, community, lake where any of these monies might be directed to, and if it is done on the basis of petition, then it could come from anywhere. But I think that the administration, and frankly, the EPA, has a lot of explaining to do on this because we don't know very much, and that is what is creating this number of--and by the way, these will be authorized if they in fact succeed in getting through the mix of the business here in Congress. But I wonder what----

Mr. Fox. We stand ready to work with you on the authorization if members feel that is important. I will tell you we have been very specific from the very beginning of this about precisely which communities would be eligible to receive these funds. As I said, these are communities that have been identified for the better part of 15 years. Michigan has in fact, got the highest number of communities. I have got a list here of precisely which communities would be eligible. That was a list we provided when this announcement was made with the budget, and I would be happy to make sure you get that.

Mr. Knollenberg. All right. My final question. I know my time is expiring here. Was there any individual in Michigan that was notified of any of this, since and before? At the time of the State of the Union speech and since?

Mr. Fox. We have been working through a process since the budget announcement to try and work through a range of issues that are raised by a program of this kind. But I am not aware of specific communications that happened before the President announced the budget, which is the standard operating procedure----

Mr. Knollenberg. Or after?

Mr. Fox. No, after we have had a number of communications. And we will continue to do so.

Mr. Knollenberg. Who are those individuals?

Mr. Fox. Well, we don't want to get ahead of congressional authorization here, and this----

Mr. Knollenberg. Well, you already did. You already did.
Mr. Fox. This committee has not yet, obviously, appropriated the funds for that, but we do want to make sure we can hit the ground running should the committee decide to provide those funds. We have set up an internal process within EPA to also reach out to the states so that we can in fact develop this program in a way that is most effective of our goals.

Mr. Knollenberg. I would just suggest to you that it would be of great interest to us if you would work with us, because we would like to know what is up, what your suggestions might be, your thoughts might be on this. We have plenty of thoughts about it certainly, and we want to work with you and not be in the dark about what you are doing. So I just---

Mr. Fox. We would be happy to do that.

Mr. Knollenberg. So I just suggest that I look forward to doing just that.

Mr. Fox. Okay, thank you.

Mr. Knollenberg. Thank you, Mr. Chairman.

Mr. Prescott. The gentleman's time has expired. We have a general vote. I think we will break at this point and return presently. Thank you.

[Recess.]

Mr. Walsh. There has been an agreement reached between the Chairman of the full committee and the Ranking Member of the full committee, that we will not conduct hearings during the debate of the rule on the floor on the supplemental. So the bad news is we don't get to ask our questions. The good news is, you all can go home because we just can't get everybody back together. We don't have the room in the afternoon, and we do have to finish debate on the supplemental.

I am really disappointed, because I think the staff did a terrific job of getting these hearings together. I think it is a great format for us. Hopefully it is for you too. I don't know whether we will be able to reschedule or not because of the compressed time that we have, but nonetheless, an agreement has been reached, so we will honor that.

We thank you for your testimony this morning. We will submit additional questions for the record, and if we can reschedule this, I hope you could accommodate that request. Thank you very much.

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

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